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Supreme Court of the United States

No. 384.

COURT TERM, 1950.

STANDARD OIL COMPANY,
Appellant,

vs.

THE STATE OF NEW JERSEY, by THEODORE D. PARSONS, Attorney General of the State of New Jersey,
Appellee.

ON PETITION FOR APPEAL FROM THE SUPREME COURT OF NEW JERSEY TO THE SUPREME COURT OF THE UNITED STATES.

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM.

JOSIAH STRYKER,
Attorney of and Counsel for Appellant.

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Supreme Court of the United States

No. 384.

Court Term, 1950.

Standard Oil Company,

Appellant,

vs.

The State of New Jersey, by Theodore D. Parsons, Attorney General of the State of New Jersey,

Appellee.

ON PETITION FOR APPEAL FROM THE SUPREME COURT OF NEW JERSEY TO THE SUPREME COURT OF THE UNITED STATES.

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM.

This memorandum is filed in answer to appellee's statement in opposition to appellant's statement of jurisdiction and motion to dismiss or affirm, and is intended to supplement appellant's statement in support of jurisdiction.

The jurisdiction of this Court is based upon appellant's claim that the escheat statute of New Jersey (Chapter 155 of the Session Laws of 1946, as amended by Chapter 357 of the Session Laws of 1947, which statute is copied in appellant's statement in support of jurisdiction) and the judgment entered under such statute violate the due process of law provision of the Fourteenth Amendment and paragraph 1, section 10, of Article I of the Constitution of the United States in the following respects:

(a) The notice to the claimants provided by such statute as well as the notice actually given was equivalent to no notice at all.

(b) The claims escheated by the judgment had no situs in New Jersey for the purpose of escheat and the New Jersey Court was, therefore, without jurisdiction.

(c) Each of the claims escheated by the judgment was based upon a contract. Prior to the judgment, each of the claimants had a remedy against the defendant under his contract. The judgment deprives the claimants of this remedy without substituting therefor any adequate remedy.

All of the contentions above mentioned were raised in the Answer of the Standard Oil Company in the above cause, were fully argued before the trial court and before the Supreme Court of New Jersey on appeal, and the decision of said court sustained the statute as not in violation of either of the above mentioned provisions of the Constitution of the United States except as stated in its opinion concerning the failure to give any notice to claimants with claims under $50.

It is well settled that if all or any of the above contentions are sustained, the appellant is not protected by the judgment from the subsequent assertion by the claimants of their claims against it. To compel the appellant to transfer the stock in question or to pay the claims against it to the State, without protecting it from subsequent liability with respect to the claimants, would deprive the appellant of its property without due process of law. *Security Savings Bank* vs. *State of California* (1923), 263 U. S. 282, 286, 287; *Anderson National Bank* vs. *Luckett* (1944), 321 U. S. 233, 242, 243.

The Common Law Power of the State of New Jersey to Escheat Property Existed Only in the Case of Property Which Had no Other Owner, not of Property the Owner of Which Was Unknown.

Although it was claimed by the State that it had a common law power to escheat the choses in action in question, the decision of the Supreme Court did not sustain this claim. The Court cited *Dyke* vs. *Walford* (Privy Coun.—1846), 5 Moo. P. C. 434, 13 Eng. Rep., Full Reprint 557, as establishing the common law right under the doctrine of *bona vacantia* to take property which had no owner. See: *State* vs. *Standard Oil Company* (Sup. Ct.—1950), 5 N. J. 297. The Court stated that under the Act of 1946 "the State's right is purely derivative; it takes only the interest of the unknown or absentee owner."

It was held that under the Constitution of New Jersey a claim which was barred by the statute of limitations at the time the State's right accrued under the escheat statute could not lawfully be escheated.

Although it has been stated in some decisions in jurisdictions other than New Jersey that the right of the State to appropriate property, the owner of which is unknown, is a common law right based on the English doctrine of *bona vacantia*, this view is not sustained by the English cases.

The case of *Dyke* v. *Walford* (Privy Coun.—1846), 5 Moo. P. C. 434, 13 Eng. Rep., Full Reprint 557, reviews the history and considers the effect of the doctrine of *bona vacantia*. In the course of the argument of this case Mr. Parker, who was of counsel, said:

> ". . . the rule at common law, is, that property must belong to somebody; and where there is no other

owner, not where the owner is unknown, that is the distinction, it is the property of the Crown."

The court adopted this statement of Mr. Parker, stating with reference to *bona vacantia* at page 580 of the Reprint report:

"... it is the right of the Crown to 'bona vacantia;' to property which has no other owner."

In re Wells (Chancery Div., 1933) 1 Ch. 29; *Dyke* vs. *Walford* was cited. Lord Hanworth said at page 44, speaking of *bona vacantia;*

"... it is the right of the Crown to *'bona vacantia'*; to property which has no other owner."

In the same case Lawrence, L. J., said:

"The right of the Crown to succeed to the personal estate vested in a company at the time of its dissolution does not in my opinion differ in substance from the right of the Crown to succeed to the personal estate of a person dying intestate without next of kin. In both cases the title of the Crown arises because the property has no other owner; such property must not, of course, be confused with property the owner of which is unknown."

Romer, L. J., in the same case, speaking of *Dyke* vs. *Walford,* said at page 56:

"The Privy Council in fact accepted the argument put forward by Mr. Parker in that case, that the rule at common law is that property must belong to somebody, and where there is no other owner, not where the owner is unknown, that is the distinction, it is the property of the Crown. The distinction referred to by Mr. Parker is, of course, that on which such cases as *Armory* v. *Delamirie* are based. But

this right of the Crown to property that has no other owner has been frequently stated by writers of great authority."

See *Armory* v. *Delamirie* (1722), 1 Strange 505, 1 Sm. Lead. Cases 679, 93 English Reports, Full Reprint, 664. See, also: Bona Vacantia by F. A. Enever, at page 13; *Illinois Bell Telephone Co.* vs. *Slattery* (C. C. A. 7th, 1939), 102 Fed. (2d) 58.

Unless the Act of 1946 is valid and lawfully authorizes the State to escheat the property covered by the judgment, the State has no such power and the judgment takes the property of the appellant without due process of law.

The Notice to the Claimants as Provided by the Statute and the Notice Actually Given Was so Inadequate as to Amount to no Notice.

We will not here repeat appellant's argument on this question which is contained in appellant's statement in support of jurisdiction, except to comment on the cases cited in appellee's brief and to somewhat amplify the argument.

Appellee cites *Mullane* vs. *Central Hanover National Bank & Trust Co.*, (1949) 339 U. S. 306, 94 L. Ed. 978, as a controlling decision. As set forth in our statement in support of jurisdiction, the notice in the case at bar fails to comply with the standard set forth in the opinion in the case last cited. The published notice in the *Mullane* case contained the name of each trust, although it did not contain the names of the persons having a contingent interest in the trusts, which names and addresses were then unknown to the trustee.

It appears from the opinion that this court was influenced in holding that the statement of such names was

not necessary by several facts not present in the case at bar. First, notice of the manner in which notice would be given of the settlement of the account had previously been given, pursuant to the statute, to the persons interested in each trust. Second, the persons whose addresses were known, to whom notice was required to be mailed by the trustee, had a common interest in the due administration of the trust, with those having a contingent interest. Third, the statute provided for the appointment of a guardian for those having an interest in the income and who did not appear, and also a guardian for those having an interest in the corpus who failed to appear, so that all interests would be adequately protected. Fourth, it was essential that the accounts of the trustee be settled, and the expense of ascertaining the names of everybody then having an interest, vested or contingent, in the trust would have been very great and upon being charged to the trust would have reduced the interests therein of the beneficiaries.

In the case at bar the claimants whose property was escheated by the judgment have no interests in common, each has a wholly independent claim. The purpose of the proceeding is to take their property, for the benefit of the State, and to deprive them of any remedy against the defendant corporation.

Even if it be presumed that the claimants had knowledge of the escheat statute which was enacted long after their claims arose, it cannot be presumed that they had any knowledge of the institution of the proceeding or of the time and place of hearing.

In a very real sense the judgment of the court deprives them of their property without any opportunity afforded them to appear and assert their claims.

Appellee's counsel cite *The Mary*, (1815) 13 U. S. (9 Cranch) 126, 3 L. Ed. 678; at page 10, *Hollingsworth* vs.

Barbour, (1830) 29 U. S. 466, 7 L. Ed. 922; and at page 14, *Williams* vs. *Amroyd*, (1813) 11 U. S. 423, 3 L. Ed. 392. These cases are cited evidently for the purpose of sustaining appellee's contention that no notice was necessary other than institution of the proceeding and the injunction restraining the appellant from transferring the property.

These three cases are distinguishable. In *The Mary* and in *Williams* vs. *Amroyd*, the seizure was of a vessel in charge of a representative of the owner. In *Hollingsworth* vs. *Barbour* the proceeding was not a proceeding *in rem* and the judgment based on published notice was held to be invalid because the statute failed to provide for published notice. The difference between the notice to the owner afforded by a seizure of such tangible property and the institution of a proceeding to take intangible property is suggested in the opinion of *Mullane* vs. *Central Hanover Bank & Trust Co., supra.*

It is also suggested by the sentence which immediately follows the quotation contained on page 10 of appellee's brief from the decision of this court, in *Hollingsworth* vs. *Barbour*. This sentence is as follows:

> ". . . But, if these cases do form an exception, the exception is confined to cases of the class already noticed, where the proceeding is strictly and properly *in rem* and in which the thing condemned is first seized and taken into the custody of the court."

The proceeding in the case at bar, while in the nature of a proceeding *in rem*, is not strictly and properly such a proceeding within the meaning of the dictum in the case last above cited.

Appellee's counsel cite *Anderson National Bank* vs. *Luckett*, (1944) 321 U. S. 233, 243, 88 L. Ed. 692, in attempting to support their contention that no notice other than the

institution of the proceeding and the injunction against the Standard Oil Company is required. The case cited, however, did not consider the validity of a statute under which a judgment was to be entered transferring the property from the claimant to the State. Furthermore, the court considered the adequacy of the notice given in addition to the seizure and held that because it was in accord with the time honored method of giving notice in Kentucky, that it was adequate in view of the character and purpose of the proceeding. As appears from the quotation from the opinion in the *Luckett* case on page 11 of appellee's brief, the court relied upon *Corn Exchange Bank* vs. *Coler*, (1929) 280 U. S. 318, in which this court sustained the validity of a procedure based upon an English statute passed in 1718 and a New York Colonial statute enacted in 1773 and reenacted by the State of New York in 1784.

There is no time honored practice in New Jersey supporting such an inadequate notice as is provided by the 1946 Escheat Act.

Counsel cite and quote from the opinion in *Security Savings Bank* vs. *California* (1923), 263 U. S. 282, 68 L. Ed. 301, and state that the procedure considered in that case was substantially the same as in the present New Jersey case. This statement is erroneous.

The procedure in the case last cited is set forth in the opinion at pages 284 and 285, and more fully in the opinion of the Supreme Court of California, 186 Cal. 419, 199 P. 791. Each depositor was made a party to the proceeding. The summons naming each party was published for four weeks in a newspaper of general circulation, published in that county. With the summons a notice also was published requiring all persons, other than the named defendants, to appear and show cause why the moneys involved in the suit should not be deposited with the State Treasury.

It also appears in the opinion of this Court at page 289, *et seq.*, that a statute of California required the annual publication in a newspaper of the city in which the bank is located of a statement showing the amount of each deposit therein, the name and last known residence of each depositor and the fact of his death, if known, in all cases where the depositor had not made a deposit or withdrawal for ten years next preceding, unless the depositor was known to be living or the deposit was less than $50.

The court said:

> "The fact that, after nine, or more, such publications in the local newspaper, a deposit remains unclaimed, affords the legislature some basis for thinking that the further publication provided for in these proceedings would be more apt to accomplish the purpose of actual service, if made in the county in which the State capitol is located."

In the case cited no objection was urged on the ground that the time allowed was not sufficient for entering an appearance as in *Roller* vs. *Holly* (1900), 176 U. S. 398, or that the contents of the notice failed to convey the required information as in *Grannis* vs. *Ordean* (1914), 234 U. S. 385. See page 288 of the opinion.

Counsel erroneously state at page 7 that the appellant does not contend that the notice as actually published was insufficient and did not constitute due process. We do contend that the notice as actually published, as well as the notice prescribed by the statute, was equivalent to no notice at all and not sufficient to constitute due process. The statute only required that the notice be published for three successive weeks in one newspaper of general circulation designated by the court. See section 7. The court designated the Trenton Times, a newspaper published in Trenton of circulation principally in Mercer County.

The last known addresses of the persons whose property was escheated by the judgment of the court were stated in the record of the case and are as follows:

> Six in New York City; two in Mexico; one in Memphis, Tennessee; one in Dallas, Texas; one stated in the notice to be in Wheeling, Virginia (although the correct address was Wheeling, West Virginia); one in Washington, District of Columbia; one in River Forest, Illinois; one in Logan, Ohio; one in Kansas City, Missouri; two in Springfield, Massachusetts; one in Charleston, South Carolina; one in Manhattan, Kansas; one in Watsonville, California; and only one in New Jersey, in the City of Elizabeth.

It is respectfully submitted that three weeks' publication in a newspaper in Trenton would be equivalent to no notice at all to most of these individuals. It does not appear that any except the one New Jersey resident was ever in New Jersey, or, in fact, had ever heard of the Trenton Times, in Trenton, New Jersey. There is no basis for the belief that anyone in New Jersey who might happen to see the notice would have any acquaintance with or knowledge of these claimants.

Entirely aside from the question of the contents of the notice, the statutory requirements for publication and the publication actually made was a perfectly useless gesture which afforded none of the claimants the slightest opportunity to learn of the proceeding, or to appear and protect their interest.

Several of these claimants were the record holders of stock in the defendant Company, and each of them had claims for dividends which were enforceable against the defendant Company, notwithstanding the period of time which had elapsed since they had communicated with the Company. In view of this fact, it is not realistic to suggest

that by the judgment of the court they were not deprived of anything, for if the judgment is valid, their stock and their claims against the Company for dividends were confiscated by the State without any real opportunity afforded them to assert their claims. If, as contended by the appellant, the judgment is invalid, they still may establish their claims against the Company, in the Courts of New York, or Maryland, or in the Canal Zone, and the judgment will afford no protection to the Company from such claims.

If any effort were really made to afford notice to these claimants by publication, the notice would have been published at the place of their last known addresses, for it is probable that even though they did not then reside there, some relative or acquaintance, if the notice came to their attention, would advise them of the pendency of the proceeding.

As was well stated in the dissenting opinion of Chief Justice Vanderbilt:

> ". . . This notice, moreover, need only be published once a week for three successive weeks in a single newspaper, and the owner to whom it is supposedly directed must file his claim five days before the time fixed for the hearing. Such notice is wholly inadequate when it is borne in mind that the very purpose of the act is to extinguish the rights of persons whose names or whereabouts are unknown. Neither the information contained in the notice, nor the publication of it, nor the time allowed to file a claim are reasonably calculated to inform owners of the property of the impending proceedings, and to give them an opportunity to appear and protect their interests. The notice required by the Statute is, in effect, no notice at all to anyone."

It is well established that if the notice is inadequate, the judgment is ineffective to protect the defendant against

the subsequent assertion of the claims of the claimants against it, and that the defendant, therefore, is entitled to raise this question. See *Security Savings Bank* vs. *California* (1923), 263 U. S. 282; and *Anderson National Bank* vs. *Luckett* (1944), 321 U. S. 233.

We concede that this court is reluctant to decide that the publication of a notice sustained by the highest court of the State is inadequate because of failure to comply with the due process requirement. Unquestionably this court has the power so to do. See: *Rolier* vs. *Holly* (1900), 176 U. S. 398.

In *Bellingham Bay etc. Co.* vs. *New Whatcom* (1899), 172 U. S. 314, the question involved was whether the publication of a notice of re-assessment of property in New Whatcom for an improvement, which notice was published for three days and required any property owner who wished to appear to appear ten days from the last publication, was sufficient. The owner of property who questioned the adequacy of the notice had its principal office in the City of New Whatcom. In holding the notice sufficient this court said:

> " . . . It may be that the authority of the legislature to prescribe the length of notice is not absolute and beyond review, but it is certain that only in a clear case will a notice authorized by the legislature be set aside as wholly ineffectual on account of the shortness of time. The purpose of notice is to secure to the owner the opportunity to protect his property from the lien of the proposed tax or some part thereof. In order to be effectual it should be so full and clear as to disclose to persons of ordinary intelligence in a general way what is proposed. If service is made only by publication, that publication must be of such a character as to create a reasonable presumption that the owner, if present and taking ordinary care

> of his property, will receive the information of what is proposed and when and where he may be heard. And the time and place must be such that with reasonable effort he will be enabled to attend and present his objections."

The above recited quotation is just as applicable to publication of a notice at a place and in circumstances where there is not the slightest probability that the notice will ever come to the attention of the persons interested as it is to a publication for an inadequate period. The State has no interest in the shares of stock and the claims for dividends, unless they have in fact been abandoned. The failure of the stockholders to claim their dividends and to keep the corporation advised of their present addresses is at most but presumptive evidence of abandonment. Their right to enforce their claims against the appellant has been in no respect affected by their delay. They are entitled to an opportunity to rebut the presumption of abandonment. Because of the utter inadequacy of the published notice in this case they have been deprived of that right.

The last known addresses of each of these claimants appear in the record of the case. The publication of the notice in a local newspaper having a restricted circulation in a place remote from the last known addresses of all but one of the claimants, and the failure of the claimants to appear in response to such publication leaves the State's claim resting only upon a presumption which the interested stockholders have had no opportunity to rebut.

The notice required by the statute and directed by the court was published in such a way as to make it certain that none of the nonresident claimants would ever learn of it. The State, therefore, is in the position of seeking to confiscate these claims of nonresidents without affording them any real opportunity to appear and present their

claims, and without any proof of the fact upon which the State's right depends, other than the presumption which the stockholders have had no opportunity to rebut.

The fact that, as stated in the majority opinion of the New Jersey Supreme Court, a stockholder may apply to the court to open the judgment within two years after its entry does not make the statutory proceeding accord with due process. If an owner of shares of capital stock should succeed in opening the judgment, he would not receive his shares of stock or the then value of such shares, or even the full amount of the money received by the State upon the sale of the shares. He would only receive such money, less the amount of counsel fees allowed by the court to the counsel of the State, the percentage of the escheator, and the costs of the proceeding or such part thereof as might be apportioned to the proceeds of the sale of his stock.

We respectfully submit that this case is the clear case, in which this court should exert its power to hold that the notice given in this case was so obviously inadequate as to render the proceeding violative of the due process of law provision, and that claimants are not deprived of their property by the proceeding, and that the judgment does not protect the appellant against the subsequent assertion of their claims against it.

The Property Escheated by the Judgment of the State Court had No *Situs* in New Jersey for the Purpose of Escheat.

This point is discussed in our statement in support of jurisdiction. As stated therein, it appears from the stipulation of facts in the trial court that the executive offices of the appellant, the Standard Oil Company, have been located in New York City since 1927, since which date it

has owned no property in the State of New Jersey, except certain records at its statutory registered office and has had no place of business in New Jersey, except such statutory office. It is suable in the State of New York, in the State of Maryland and the Canal Zone.

The last known addresses of the persons whose claims were escheated, with only one exception, are not in the State of New Jersey. The last known address of two or the persons whose property is covered by the judgment of escheat was in the Country of Mexico. Six of such persons had last known addresses in the City of New York. The last known addresses of the others range from Tennessee to California.

The claims escheated by the judgment consist of shares of capital stock in the defendant company and unclaimed dividends. The judgment of the trial court escheated unclaimed dividends payable to many hundred former stockholders whose last known addresses were all over the world, including the Island of Java, Argentine Republic, Canada, Cuba, England, Mexico, Brazil, France, Holland, the Island of Sumatra, Venezuela, Chile, Uruguay, Peru and other foreign countries and in almost every state of the United States, including a considerable number in the State of New York. The judgment, however, as modified by the Supreme Court excluded all of the claims except those of persons who were named in the published notice.

The State Supreme Court determined that the trial court had jurisdiction for the purpose of escheat over the claims in question and cited and relied upon *Security Savings Bank* vs. *State of California* (1923), 263 U. S. 282; *Anderson National Bank* vs. *Luckett* (1944), 321 U. S. 233; *State Tax Commission* vs. *Aldrich* (1941), 316 U. S. 174; *Northwest Airlines* vs. *Minnesota* (1943), 322 U. S. 292; *Connecticut Mutual Life Insurance Company* vs. *Moore* (1949), 333 U. S. 541.

The case at bar is readily distinguishable from each of the cases above cited. This court in *Security Savings Bank* vs. *California, supra,* based its decision of jurisdiction not only on the fact that the unclaimed deposits were debts due by a California corporation but upon the further facts that the place of business of the defendant corporation was in California, and that the debts arose out of contracts made and to be performed in that state. The court said at page 285:

> "The unclaimed deposits are debts due by a California corporation with its place of business there. *State* v. *Anglo & London Paris National Bank,* 186 Cal. 746, 753; *State* v. *Security Savings Bank,* 186 Cal. 419, 423. The debts arose out of contracts made and to be performed there. *Farmers & Merchants Bank* v. *Federal Reserve Bank,* 262 U. S. 649, 660. Thus the deposits are clearly intangible property within the State. Over this intangible property the State has the same dominion that it has over tangible property."

In *Anderson National Bank* vs. *Luckett, supra,* this court said at page 241:

> "The deposits are debtor obligations of the bank, incurred and to be performed in the state where the bank is located and hence are subject to the state's dominion."

Citing, among other cases, *Security Savings Bank* vs. *California, supra.*

In the *Luckett* case the portion of the statutory provision there sustained had no effect upon the title of the depositors in the bank. It merely provided for the transfer of the custody of the deposits to an officer of the State to remain subject to the claims of the depositors, unless and

until an escheat proceeding should be instituted in which proof of actual abandonment was required as a condition of escheat. We have found no case in this court which considers the right of the state of domicile of a corporation which is suable in other jurisdictions to escheat claims of nonresidents based upon contracts made outside of the state and enforceable where made.

In *United States* vs. *Klein*, (1937) 303 U. S. 276, the funds escheated by the State of Pennsylvania were within the control of the United States District Court of a Pennsylvania District. The United States Government made no claim to the funds and the claimants could not secure such funds without coming into Pennsylvania and establishing their claims before the United States District Court there.

State Tax Commission vs. *Aldrich* (1941), 316 U. S. 174; *Corry* vs. *Baltimore* (1904), 196 U. S. 466; *Schuylkill Trust Co.* vs. *Pennsylvania* (1937), 302 U. S. 506, and *Blackstone* vs. *Miller* (1903), 188 U. S. 189, all of which cases are cited in the brief of appellee are tax cases, which hold that the capital stock of a corporation has a situs for the purpose of taxation at the domicile of the corporation and at the same time at the residence of the owner which may be in a different state. These cases are based upon the legal principal that intangible property may at the same time have a situs for taxation in more than one jurisdiction. The taxation at the domicile of the corporation under these decisions does not relieve the owner from the burden of taxation at his domicile in another jurisdiction. These tax cases are inapplicable unless it should be held that the same chose in action may at the same time have a situs in more than one jurisdiction for the purpose of escheat. Certainly a double escheat of debts owing by a corporation would deprive such corporation of its property without due process of law.

The decision of this court in *Connecticut Mutual Life Insurance Co.* vs. *Moore, supra,* supports a result directly contrary to the decision of the New Jersey Supreme Court.

In the case last cited this court held that insurance companies incorporated under the laws of states other than the State of New York, but doing business in such state, could lawfully be required by a statute of New York to pay over to that State the proceeds of insurance policies unclaimed for a designated period, where the policy was issued for delivery in New York upon the life of a person then resident therein, if the assured continued to be a resident of New York and the beneficiary also was a resident of such state at the maturity of the policy.

As appears from the dissenting opinion of Mr. Justice Jackson, one of the plaintiffs in the case cited was a corporation of Pennsylvania, and under the laws of Pennsylvania, the proceeds of the very policies which it was required to pay to New York, were escheatable in Pennsylvania, regardless of where the insured or the beneficiary resided.

While the decision in the case cited did not in express terms deny the right of Pennsylvania to escheat the proceeds of the policies claimed by New York, it in effect denied such right unless there could be a double escheat. The right of Pennsylvania to escheat the policies claimed by New York was not definitely decided as the prevailing opinion expressed the view that that question was not directly presented.

We respectfully submit that the question is directly presented in the case at bar for there are claims involved based on contracts made in New York with persons who then lived in New York and who presumably continued to live there, and the defendant is suable in New York.

If New York has the power to escheat these claims and New Jersey has no such power, the judgment in the case at bar is invalid because rendered by a court having no jurisdiction over the claims in question for the purpose of escheat or over the owner of such claims and the defendant is not protected by the judgment either against the claims of New York or the claims of the persons whose property the judgment escheats.

To require the defendant to pay to the State of New Jersey the amount of these claims without protecting it from a subsequent action against it either by the State of New York or the claimants would be to take its property without due process of law.

Appellee cites *Pennington* vs. *Fourth National Bank*, (1917), 243 U. S. 269, at page 18 of its brief. The case cited involved an attachment against a bank account of a nonresident in order that such account might be applied in satisfaction of an obligation of the nonresident. In the case at bar the state confiscates the property of nonresidents for its own use in order to enhance its revenues.

We respectfully submit that a distinction exists between the attachment of the property of a nonresident and its application in satisfaction of his debts, and the appropriation of his property simply because the corporate debtor has not heard from him in fourteen years.

The *Situs* of Shares of Capital Stock for the Purpose of Escheat Is Where the Stock Certificates Are Located.

The escheat statute of New Jersey, as construed by the State Supreme Court, takes only the interest of the unknown or absentee owner. See: 5 N. J. 281. The opinion of the state court says at page 298:

> "The state's right is purely derivative; it takes only the interest of the unknown or absentee owner.

> . . . the state takes only the creditor's right; it cannot create or revive an obligation that had no existence or had become extinct."

The effect of the judgment is to confiscate the claims of nonresidents of New Jersey and to enforce such claims against the appellant and to do this notwithstanding the fact that the contracts on which these claims were based were not made in New Jersey and were enforceable against the Company in jurisdictions other than New Jersey as well as in that state.

By the judgment the appellant is ordered "to issue in the name of and deliver to the Treasurer of the State of New Jersey certificates for twelve (12) shares of its common stock in lieu of the certificates for said number of shares mentioned in Exhibit 3 of the above mentioned stipulation (which last mentioned certificates are not in the possession or under the control of the defendant) and that the Standard Oil Company make all necessary entries upon its books and records of the issuance in the name of and delivery to the Treasurer of the State of New Jersey of the aforementioned certificates, and of title to the said shares of stock in the Treasurer of the State of New Jersey".

The judgment does not direct that the outstanding certificates be cancelled, and since they are owned by nonresidents who have the power to transfer title thereto by a transfer of the certificate, it is at least doubtful if the court had the power to direct the cancellation of such outstanding certificates, even prior to the enactment in 1916 by the State of New Jersey of the Uniform Stock Transfer Act, now R. S. 14:8-23 *et seq.* Long prior to the enactment of that act, however, it was established by the law of New Jersey that the transfer of a share of stock with proper endorsement or assignment transferred the equitable interest

therein. *Broadway Bank* vs. *McElrath* (Ch.—1860) 13 N. J. Eq. 24.

In *Direction Der Disconto-Gesellschaft* vs. *United States Steel Corporation* (Dist. Ct. N. Y.—1924) 300 Fed. Rep. 741, the United States District Court for the Southern District of New York sustained the claim of the Trustee of England, appointed under the Trading With The Enemy Act of that country to shares of stock of the United States Steel Corporation, a corporation of New Jersey, on the ground that the certificates of stock had been seized in England. In the course of his opinion Judge Learned Hand stated that there was nothing in the decision of this court in *Jellenik* vs. *Huron Copper Co.* (1900), 177 U. S. 1, which could be regarded as holding that shares of corporate stock could have *no situs* other than at the domicile of the corporation.

The decision in *Disconto-Gesellschaft* v. *United States Steel Corporation* was affirmed by this court, 267 U. S. 22. In the course of the opinion Mr. Justice Holmes refers to the opinion of the District Court as leaving nothing to be added.

In the course of his opinion in the case last cited Mr. Justice Holmes said in part:

> "The appellants, starting from the sound proposition that jurisdiction is founded upon power, overwork the argument drawn from the power of the United States over the Steel Corporation. Taking the United States in this connection to mean the total powers of the Central and the State Governments, no doubt theoretically it could draw a line of fire around its boundaries and recognize nothing concerning the corporation or any interest in it that happened outside. But it prefers to consider itself civilized and to act accordingly. Therefore New Jersey having authorized this corporation like others

to issue certificates that so far represent the stock that ordinarily at least no one can get the benefits of ownership except through and by means of the paper, it recognizes as owner anyone to whom the person declared by the paper to be owner has transferred it by the indorsement provided for, wherever it takes place. It allows an indorsement in blank, and by its law as well as by the law of England an indorsement in blank authorizes anyone who is the lawful owner of the paper to write in a name, and thereby entitle the person so named to demand registration as owner in his turn upon the corporation's books. But the question who is the owner of the paper depends upon the law of the place where the paper is. It does not depend upon the holder's having given value or taking without notice of outstanding claims but upon the things done being sufficient by the law of the place to transfer the title. An execution locally valid is as effectual as an ordinary purchase. *Yazoo & Mississippi Valley R. R. Co.* v. *Clarksdale*, 257 U. S. 10. The things done in England transferred the title to the Public Trustee by English law."

In *Klein* vs. *Wilson & Co.* (Dist. Ct. N. J.—1924), 7 Fed. (2d) 769, aff'd. on opinion below (C. C. A. 3rd—1925), 7 Fed. (2d) 777, a bill was filed by a stockholder of Wilson & Co., a corporation of the State of New York, for the appointment of a receiver of that corporation on the ground of insolvency. Wilson & Co. had no assets in New Jersey but it owned all of the capital stock of Wilson & Co., a New Jersey corporation, which had property and assets in New Jersey. The certificates for such stock were in the possession of the New York corporation in New York. The court held that the New York corporation had no assets in New Jersey which would warrant the appointment of a receiver in that state, that the situs of the stock of the New

Jersey corporation was in New York where the certificates were held.

In *In re Rapoport's Estate* (Sup. Ct.—1947), 317 Mich. 291, 26 N. W. (2d) 777, cert. den. 332 U. S. 764, it was held that certificates of corporate stock being a part of the estate of a decedent who died domiciled in California but which at the time of his death were in Detroit, Michigan, were property within the State of Michigan and subject to escheat by the State of Michigan, the decedent having died intestate leaving no one capable of taking his estate. The litigation was between the California administrator and the administrator in Michigan.

New Jersey Has No Power to Escheat Claims of Nonresidents Based Upon Contracts Made Outside of New Jersey and Enforceable Under the Laws of the State Where Made and Where the Appellant Is Suable.

As above stated the state under the judgment of escheat takes the claims of nonresidents based on contracts not made in New Jersey simply because the claimant has not asserted such claims for fourteen years, or because the whereabouts of the owner have been unknown to the corporation for the same period. The statute is not a true escheat statute as there has been no proof in the case that the claims and capital stock have no owner as in the case where the owner has died intestate leaving no one capable of taking his property. There is no presumption that the owner is deceased. Even if he were deceased, there would be a presumption in absence of proof to the contrary that he left someone capable of taking his property. The statute is a confiscation statute rather than a true escheat statute.

The question involved is whether the state has the power to confiscate property of nonresidents, not served with process in New Jersey, on the theory that the shares of

capital stock and the indebtedness of the corporation to the claimants for dividends is property in New Jersey which the state may lawfully confiscate.

It is well settled that the laws of a state have no operation beyond its boundaries, except as required by the full faith and credit clause of the Federal Constitution.

In *Ogden* vs. *Saunders* (1827), 12 Wheat. 214, 358 *et seq.*, suit was instituted in Louisiana by a citizen of Kentucky against the plaintiff in error, a citizen of Louisiana. The defendant pleaded a certificate of discharge from all his debts under the insolvent laws of the State of New York, where he then resided. Judgment was rendered for the plaintiff and the defendant appealed to this Court. The opinion of this Court was written by Mr. Justice Johnson and commences at page 358. At page 368 the Court said:

> "I, therefore, consider the discharge, under a state law, as incompetent to discharge a debt due a citizen of another State; and it follows that the plea of a discharge here set up, is insufficient to bar the rights of the plaintiff."

Several opinions were rendered in the case last cited which were not entirely harmonious.

In *Boyle* vs. *Zacharie* (1832), 6 Peters 348, this Court said that the opinion of Justice Johnson was to be regarded as the opinion of the Court and that whatever principles were established by that opinion are to be considered no longer open for controversy but the settled law of this Court.

In *Denny* vs. *Bennett* (1828), 128 U. S. 489, this Court held that a state statute providing for the distribution of the property of a debtor among his creditors, and his discharge from his debts, did not release a debt due to a citizen of another state, who did not prove his debt, nor

become subject to the jurisdiction of the Court. At page 497 the Court said, after citing *Ogden* vs. *Saunders*, *Baldwin* vs. *Hale*, and *Gilman* vs. *Lockwood*, said:

> " . . . The proposition lying at the foundation of all these decisions is, that a statute of a State, being without force in any other State, cannot discharge a debtor from a debt held by a citizen of such other State."

Quoting from the opinion of this Court in *Gilman* vs. *Lockwood*, the Court said at page 497:

> " . . . Insolvent laws of one State cannot discharge the contracts of citizens of other States; because such laws have no extraterritorial operation, and consequently the tribunal sitting under them, unless in cases where a citizen of such other State voluntarily becomes a party to the proceeding, has no jurisdiction of the cause."

See, also: *Clark* vs. *Willard* (1935), 294 U. S. 211.

While it is conceded that the cases last above cited deal with a situation different from that present in the case at bar, it is, nevertheless, true that in the case at bar the state is seeking to confiscate shares of stock and claims against the appellant of nonresident creditors and stockholders solely on the ground that the state has control of the debtor which is the corporation which issued the stock. The state, however, has no such control over the nonresident creditors and stockholders as to warrant it in confiscating their claims, particularly since the situation is such that their claims may be asserted against the appellant in jurisdictions other than New Jersey.

Appellee's brief contains the statement at page 15 that it is a matter of common learning that an action by an owner of stock against his corporation would have to be

of a possessory (replevin) or of an equitable nature, and that neither of such actions could be maintained against the corporation in a foreign jurisdiction. This statement is utterly unsound.

In *Direction Der Disconto-Gesellschaft* vs. *United States Steel Corporation*, 300 Fed. 741, affirmed 267 U. S. 22, action was brought in the United States District Court for the Southern District of New York by corporations claiming to be the owners of stock of the United States Steel Corporation to establish their title to shares of stock of such corporation. The Public Trustee of England who was appointed under the Trading With The Enemy Act of that country claimed to be the owner of the stock and the United States Steel Corporation was directed to register the Public Trustee as shareholder upon the surrender of the certificates of stock held by such Trustee.

Furthermore, if, as we contend, the judgment of the Supreme Court of New Jersey is invalid, and the appellant were to issue the shares of stock to the state in compliance with said judgment, the true owners of the certificates of stock would not only have the power to sue the appellant in the courts of New York to establish their title to the stock but would also have the power to sue the appellant in courts other than New Jersey for damages for the conversion of their stock, and it is unquestionably true that the judgment and compliance therewith would deprive the appellant of its property without due process of law, unless the judgment of the New Jersey court protects it from the claims of states having a right to escheat and also from the claims of the owners of the stock. It is also true that the persons entitled to the dividends, but for the judgment of the New Jersey Supreme Court, would be entitled to sue the appellant for the recovery of such dividends in any jurisdiction where service

upon the appellant could be secured and to recover such dividends if the judgment of the New Jersey Supreme Court is invalid.

The New Jersey Escheat Statute and the Judgment of the State Supreme Court Entered Thereunder Violates Article I, Section 10, Paragraph 1, of the Constitution of the United States.

As above stated, on page 3 *et seq.* hereof, the State has no common law power to appropriate property simply because the owner thereof is unknown. The power of the State, therefore, to appropriate property on the above mentioned basis did not exist until 1946 when the Act under consideration in this case was enacted. Prior to the enactment of said statute, the State had no power to impair the contract rights of the stockholders of defendant Company because of any failure upon their part to assert their rights. They not only could enforce their rights as such stockholders in the State of New Jersey but in other jurisdictions where the appellant was subject to suit. The statute and the judgment thereunder, deprives them of these rights. It not only deprives them of the power to assert their rights against the appellant in New Jersey but everywhere else, substituting for the remedies which they previously had only a theoretical opportunity to appear in the proceeding above mentioned in New Jersey at the time fixed by the court to rebut the presumption of abandonment raised by their failure to collect their dividends or to keep the appellant informed of their respective addresses. The opportunity is only theoretical because the notice is published in such manner as to make it certain that most, if not all of the claimants will not hear of the proceeding in time to appear.

The right to apply to the court to open the judgment within two years after its entry does not make the substituted remedy at all adequate. In the first place, the stockholders, especially those who are not resident in New Jersey, are under no obligation either to collect their dividends within any specified time or to advise the appellant of their respective addresses, and if they delay any such action for two years after the entry of the judgment, they will not learn of it until it is too late to attempt to reopen it. In the next place, even if the judgment is reopened, the stockholders do not receive their stock or even the entire proceeds of its sale. Neither do they receive all of their dividends.

We respectfully submit that this statute and the procedure thereunder resulting in the judgment under appeal seriously impairs and, in fact, destroys the contract rights of the stockholders.

In *Security Savings Bank* vs. *California* (1923), 263 U. S. 282, this court held that a statute escheating bank deposits did not impair the contract rights of the bank, and in *Anderson National Bank* vs. *Luckett* (1944), 321 U. S. 233, this court held that a statute which required the bank to turn over unclaimed bank deposits to a state officer of Kentucky, the deposits to be held for the benefit of the depositor, impaired no contract right of the bank.

Our contention is that the statute under consideration in this case and the judgment entered thereunder does not protect the appellant from the claims of its stockholders whose stock and dividends are escheated by the judgment because, as to them, the statute authorizing the judgment and the judgment entered therunder is invalid as impairing the obligation of their contracts.

In *Connecticut Mutual Life Insurance Co.* vs. *Moore* (1949), 333 U. S. 541, this court held that the statute of

New York to which reference has above been made did not impair the obligations of contracts when its operation was confined, as this court confined it, but that statute differs from the New Jersey act in that the person entitled to the proceeds of the insurance policies could at any time recover from the state the amount of their claims, and even the insurance company, if it subsequently paid the policies, could recover from the state. The small deduction from the amount of the claim imposed by the New York statute was insignificant as compared with the deductions permitted by the New Jersey statute.

In support of our contention that any substantial impairment of the remedy impairs the obligation of the contract in violation of the constitutional provision above mentioned, we cite the following cases: *Edwards* vs. *Kearzey* (1877), 96 U. S. 595; *Walker* vs. *Whitehead* (1872), 83 U. S. 314; *W. B. Worthen Co.* vs. *Thomas* (1933), 292 U. S. 426.

Conclusion.

While the amounts involved in the case at bar are small, the case is a test case, the decision of which will govern more than one hundred other cases now pending in the Superior Court of New Jersey, which have been instituted against other New Jersey corporations based upon the provisions of the New Jersey Escheat Act. These cases in the aggregate involve a very large sum of money, and the individual claims in some of these cases are very substantial. While we concede that for some purposes the situs of corporate stock is at the domicile of the corporation, and the situs of a debt at the domicile of the debtor, it is not true that the situs of the domicile of the corporation or of the debtor is the only situs.

The question involved in this case is not whether the situs of a share of stock or a corporate debt is at the domicile of the corporation for the purposes of taxation, it is solely whether such situs is at such domicile for the purpose of escheat where the contracts upon which the claims are based were not made in New Jersey, not to be performed in New Jersey and were made with nonresidents of New Jersey, who but for the judgment in the case would have valid, enforceable claims against the corporation enforceable in states other than New Jersey and where the claimants have not only not been served with process in New Jersey but have not even had notice of the proceeding calculated to serve any of the purposes for which notice is required to be given under the due process of law clause of the United States Constitution.

We respectfully submit that the questions raised concerning the validity of the New Jersey escheat statute and the judgment rendered thereunder are substantial and that the motion to dismiss the appeal or affirm should be denied.

Respectfully submitted,

JOSIAH STRYKER,
Attorney of and Counsel for Appellant.

APPEL-
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Supreme Court of the United States

OCTOBER TERM 1950.

No. 384.

STANDARD OIL COMPANY,
Appellant,

vs.

THE STATE OF NEW JERSEY, by Theodore D. Parsons, Attorney General of the State of New Jersey.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY.

APPELLANT'S BRIEF.

JOSIAH STRYKER,
Attorney of and Counsel for Appellant.

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Supreme Court of the United States

OCTOBER TERM 1950.

No. 384.

STANDARD OIL COMPANY,

Appellant,

vs.

THE STATE OF NEW JERSEY, by Theodore D. Parsons, Attorney General of the State of New Jersey.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY.

APPELLANT'S BRIEF.

This is an appeal from the judgment of the Supreme Court of New Jersey. The opinion of the Court below is officially reported in 5 N. J. 281, *et seq.* The opinions of the Superior Court, the Court of original jurisdiction in this cause, are reported in 2 N. J. Super. 442, and 5 N. J. Super. 60.

Grounds on Which Jurisdiction of This Court is Invoked.

The proceeding was instituted under Chapter 155 of the Session Laws of 1946, P. L. 1946, p. 713, as amended by Chapter 357 of the Session Laws of 1947, P. L. 1947, p. 1157, N. J. R. S. 2:53-15 *et seq.* A copy of the above-mentioned act is set forth in the appendix to this brief (appendix, page 1a).

The jurisdiction of this Court is invoked under Section 1257 of Title 28 of the United States Code. The appellant drew in question the validity of the abovementioned statute as violating the due process of law provision of the Fourteenth Amendment of the Constitution of the United States and Article I, Sec. 10, paragraph 1 of said Constitution. The decision of the Supreme Court of New Jersey, the Court of last resort of said State, was in favor of the validity of said statute.

Statement of the Case.

On July 27, 1948, the State of New Jersey commenced this proceeding in the Court of Chancery of New Jersey by filing therein a petition (R. 1-6) pursuant to the provisions of the Act above mentioned and thereafter serving the same upon this appellant. The petition alleged (R. 1) that this appellant had in its custody or possession property which was subject to escheat under the above mentioned Act on the alternative grounds provided in said statute, namely, that:

1. The owner of such property had died intestate without leaving anyone capable of taking the same (R. 2).

2. The owner had been unknown for fourteen successive years (R. 2).

3. The property had been unclaimed for fourteen successive years (R. 2).

4. The whereabouts of the owners had been unknown for fourteen successive years (R. 2-3).

Upon the filing of the petition the Court made an order requiring the appellant to retain in its possession or cus-

tody "such escheatable personal property as it now has in its custody or possession" until the further order of the Court and also requiring the appellant to state in its answer such information regarding "the escheatable personal property in its custody or possession as is pertinent to the prosecution of the cause" (R. 7).

The answer filed by the appellant (R. 8-30) to the petition denied that it had in its custody or possession any personal property which had escheated to the State of New Jersey (R. 8, 9, 10). Annexed to said answer was a statement (R. 14-30) showing certain alleged claims against appellant which had been unpaid for fourteen years, which included the names and last known addresses of persons entitled to unclaimed dividends on its capital stock (R. 14-24). The answer also set forth the names and last known addresses of the record owners of its capital stock whose whereabouts had been unknown to it for fourteen years (R. 27-28).

Subsequently amendments to the answer were filed by leave of the Court (R. 208-215). These amendments set forth:

1. That the alleged claims against it and the shares of its capital stock had no situs in New Jersey for the purpose of escheat (R. 209-211);

2. That the notice to the claimants provided by the statute was inadequate and insufficient to render the proceeding due process of law (R. 211-213);

3. That the above mentioned statute impaired the contracts of the owners of the claims and shares of stock in violation of Article I, Sec. 10, paragraph 1 of the Constitution of the United States (R. 213-215), and

4. That because of the foregoing the judgment of the Court would not protect the appellant from liability to the claimants and stockholders whose claims and stock were escheated to the State and that, therefore, such judgment would deprive the appellant of its property without due process of law (R. 209-215).

The original answer filed (R. 12-13) contained substantially the above mentioned objections except those numbered 2 and 3.

A hearing on the issues raised by the original answer was held on November 30, 1948. Pursuant to an order fixing the time and place of hearing (R. 32) a notice of such hearing was published for three weeks in a newspaper published in Trenton, New Jersey, in which notice neither the amounts of the respective claims sought to be escheated, the names and addresses of the former owners thereof nor the basis of the claimed escheat were set forth (R. 33-35). The adequacy of this notice was attacked by petitioner in its brief and oral argument at the above mentioned hearing.

On March 3, 1949, the Judge of the Trial Court filed his conclusions on the submission of certain legal issues for determination (R. 36-52). In this opinion the Trial Court stated that

> "Frankly, I regard the impoverished provisions pertaining to the notice to be given as an infirmity in the act, but not a mortal one * * *" (R. 52).

The Trial Court recommended that in addition to a summary of the order designating the time and place of the hearing as required by the statute, the notice should also contain the names and last known addresses and amounts of money or character of property belonging to any such person (R. 52).

Subsequent to the preliminary hearing and prior to the final hearing in the Trial Court, the parties agreed to a stipulation of facts (R. 60-207) which was received in evidence (R. 240). This stipulation, among other things set forth in Exhibit 2 thereto annexed, a revised list of the names and last known addresses of the persons appearing by the books of account of the defendant to be entitled to dividends which had been unclaimed for fourteen years (R. 92-197) and in Exhibit 3 the names and last known addresses of the record owners of capital stock of the appellant whose whereabouts had been unknown to appellant for fourteen years (R. 198-199).

No evidence was offered at the hearing for the purpose of establishing that the whereabouts of the record owners of the shares of capital stock were actually unknown or had been unknown for fourteen successive years. The only evidence of such fact is the statement contained in the stipulation that such record owners had failed to receive checks for dividends mailed to their last known addresses for fourteen years (R. 77). The names and last known addresses of the claimants and stockholders included addresses in Mexico, Java, Germany, Switzerland, Uruguay, Chile, the Argentine Republic, Venezuela and Holland (R. 92-199) and also persons whose last known addresses were in the States of California, Illinois, Massachusetts, Missouri, South Carolina and other States of the United States (R. 92-199).

It was further stipulated that since 1927, the appellant has had no office or place of business within New Jersey, except its statutory registered office at Flemington, New Jersey, and since said time has had no tangible property in New Jersey other than its stock and transfer books (R. 90).

On March 21, 1949, the Trial Court entered an order fixing April 27, 1949 at the State House Annex, Trenton, New Jersey, as the time and place of final hearing of the cause and directing that the notice of such final hearing be advertised in a newspaper of general circulation in Mercer County once a week for three successive weeks, addressed to and containing the names and last known addresses of persons or corporations apparently having unclaimed beneficial interest in or ownership of the personal property sought to be adjudged to escheat to the State and directing that any of the said persons or corporations or any other person or corporation claiming a beneficial interest in or ownership of the personal property, or any part thereof mentioned in the petition, should file with the Court his or its claim in writing at least five days prior to the date fixed for the hearing, provided, however, that in the event the value of the personal property of any one apparent owner was less than $50.00 the advertisement need not contain the name or addresses of such person or corporation (R. 53).

The above mentioned provision was based on a proviso contained in the fourth paragraph of Section 7 of the statute. The validity of this proviso was attacked in the Court below both under the State Constitution and the Fourteenth Amendment of the United States Constitution. Its validity was sustained by the Trial Court. The Supreme Court, however, determined that it was invalid but that it was severable from the rest of the act (R. 262-263). The validity of the above mentioned proviso is, therefore, not within this appeal.

The notice (R. 55-59) was published three times in the Trenton Times, a newspaper published in Trenton, New

Jersey. It was not addressed as required by the order but it contains the names and last known addresses of twenty-one persons, some of whom are the owners of record of capital stock of Standard Oil Company, and unpaid dividends thereon, and others of whom are only the owners of unpaid dividends on such stock.

After extended argument on the day fixed for hearing and the submission of briefs by both parties, the Trial Judge determined that the notice was adequate; that every claimant had had an adequate opportunity for a hearing and a determination of his rights; that all of the claims had a situs in New Jersey for the purpose of escheat and that the statute was valid and not subject to any of the objections raised in the answer as amended and argued at length in the briefs and oral argument. His opinion (R. 218-232) is reported in 5 N. J. Superior, page 460. Portions of the opinion which deal with the questions herein involved are reported at pages 474 *et seq.* (R. 228-232).

Pursuant to the statute above mentioned the judgment of the Trial Court (R. 232-235) determined that unpaid dividends amounting to $6,238.01; twelve shares of common stock of Standard Oil Company having an aggregate par value of $300.00; unpaid wages of former employees of Standard Oil Company amounting to $31,381.08; amounts withheld from former employees of Standard Oil for the purchase of Liberty Bonds aggregating $1,210.00; amounts of unpresented commercial bank checks issued by Standard Oil Company aggregating $8,561.62; and amounts due on account of debenture coupons aggregating $3,125.00 were all subject to escheat and required Standard Oil Company, the appellant herein, to pay the above amounts to the State of New Jersey and to issue in the name of and deliver to

the Treasurer of New Jersey certificates for twelve shares of common stock of the Standard Oil Company which last mentioned certificates were not in possession of or under the control of the Standard Oil Company.

Pursuant to the rules of the New Jersey Supreme Court, the court of last resort in New Jersey, that Court, on application of Standard Oil Company, the appellant herein, made an order certifying the above mentioned judgment of the Superior Court to the Supreme Court.

The Supreme Court modified the judgment of the Trial Court by excluding from the judgment (1) all claims barred by the Statute of Limitations of New Jersey (R. 252) and (2) all claims of persons not named in the published notice of final hearing (R. 262). The Supreme Court held, however, that the choses in action and shares of stock had a situs in New Jersey for the purpose of escheat (R. 262); that the notice given was adequate with respect to the claims of the persons whose names were stated therein (R. 262), that the contracts upon which the claimants based their claims were not impaired by the statute or the proceedings thereunder (R. 261) and that the judgment protected the appellant from liability to the claimants and stockholders whose claims and stock were escheated by the judgment (R. 257, 260). The decision of the Supreme Court, therefore, was in favor of the validity of the statute above mentioned and affirmed the judgment entered thereunder as so modified by it (R. 263).

The judgment of the Supreme Court (R. 265) modifying the judgment of the Trial Court in accordance with the opinion of the Supreme Court escheats to the State twelve shares of capital stock of the appellant owned by stockholders, the last known addresses of whom were in Yucatan,

Mexico; River Forest, Illinois; Elizabeth, New Jersey; New York City and Watsonville, California and unpaid dividends aggregating $128.73 to which the above persons were entitled and also unpaid dividends owing to persons whose last known addresses were as follows:

> Five in New York City; one in Memphis, Tennessee; one in Dallas, Texas; one in Wheeling, Virginia (as stated in the notice, but evidently intended to be West Virginia); one in Washington, D. C.; one in Logan, Ohio; one in Kansas City, Missouri; one in Springfield, Massachusetts; one in Charleston, South Carolina; one in West Springfield, Massachusetts; one in Mexico; one in Manhattan, Kansas.

The dissenting opinion of Chief Justice Vanderbilt (R. 263-264), in which Justice Case concurred, held that the notice prescribed by the statute was entirely inadequate, that the statute did not require the names and addresses of the last known owners of the claims in question to be stated in such notice or that the character of the property be specified therein, or that the basis of escheat be therein set forth. This dissenting opinion also stated that the requirements that the notice be published for three successive weeks only in a newspaper in Mercer County, New Jersey, and that the claimants to the property involved in the proceeding must file their claims within five days prior to the time fixed for the hearing were inadequate and that the statute violated the due process of law provisions of the Fourteenth Amendment of the Constitution of the United States. The two dissenting judges voted for a reversal of the judgment below in its entirety because of the inadequacy of the notice prescribed by the statute and the inadequacy of the opportunity for a hearing.

Specification of Such of the Assigned Errors As Are Intended To Be Urged.

The appellant contends:

1. That the judgment of escheat entered pursuant to the statute deprives it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States because such judgment does not protect it from liability to the stockholders whose claims are escheated because the notice to the claimants prescribed by the statute and the notice, as published, were so inadequate as to afford to the claimants no reasonable opportunity to learn of the pendency or purpose of the proceedings or its effect upon their claims, or to afford them an opportunity to appear and protect their rights. This contention is covered by assignment of errors numbers 3, 4, 5, 6, 9, 10 and 11 (R. 269-271).

2. That the statute, pursuant to which the judgment was entered, and the judgment vesting the title in the State to the property covered thereby violated Article I, Section 10, Paragraph 1 of the Constitution of the United States in that they impaired the obligation of the contracts of the persons whose property was escheated, and, therefore, such judgment does not protect the appellant from liability to such persons and deprives the appellant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States. This claim is covered by assignment of errors numbers 7, 9, 10 and 11 (R. 270-271).

3. That neither the shares of capital stock escheated by the judgment nor the dividends on shares of stock had a situs in New Jersey for the purpose of escheat; and irre-

spective of situs neither such shares nor dividends were lawfully seized in the proceeding; that, therefore, the Trial Court was without jurisdiction and the judgment escheating such shares of stock and dividends does not protect the appellant from subsequent liability to the owners thereof, and that the statute and judgment entered thereunder deprive the appellant of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. This is covered by assignments of error numbers 1, 2, 3, 8, 9, 10 and 11 (R. 269-271).

ARGUMENT.

The Common Law Power of the State of New Jersey to escheat personal property exists only in the case of property which has no other owner not in the case of abandoned property or of property the owner of which is unknown.

Although it was claimed by the State that it had a common law power to escheat the shares of capital stock and claims in question, the decision of the State Supreme Court did not sustain this claim. The Court cited *Dyke* v. *Walford* (Privy Council, 1846), 5 Moo. P. C. 434, 13 Eng. Reports, Full Reprint 557, as establishing the common law right under the doctrine of *bona vacantia* to take property which has no owner (R. 251). The Court said "The principle was that the right to take that which belonged to no one appertained to the crown as *jura regalia*" 5 N. J. L. 281, 297 (R. 251).

The decision in *Dyke* v. *Walford, supra,* reviews the history and considers the extent and effect of the doctrine of *bona vacantia.* In the course of the argument in this case Mr. Parker, who was of counsel, said:

> "The rule at Common law, is, that property must belong to somebody; and where there is no other owner, not where the owner is unknown, that is the distinction, it is the property of the Crown."

The court in *Dyke* v. *Walford* adopted this statement of Mr. Parker, stating with reference to *bona vacantia* at page 580 of the Reprint report:

> "* * * it is the right of the Crown to '*bona vacantia;*' to property which has no other owner."

The opinion in *In re Wells* (Chancery Div., 1933), 1 Ch. 29 cites *Dyke* v. *Walford*. Lord Hanworth said at page 44, speaking of *bona vacantia:*

> "* * * it is the right of the Crown to '*bona vacantia*'; to property which has no other owner."

In the same case Lawrence, L. J., said at page 50:

> "The right of the Crown to succeed to the personal estate vested in a company at the time of its dissolution does not in my opinion differ in substance from the right of the Crown to succeed to the personal estate of a person dying intestate without next of kin. In both cases the title of the Crown arises because the property has no other owner; such property must not, of course, be confused with property the owner of which is unknown."

Romer, L. J., in the same case, speaking of *Dyke* v. *Walford*, said at page 56:

> "The Privy Council in fact accepted the argument put forward by Mr. Parker in that case, that the rule at common law is that property must belong to somebody, and where there is no other owner, not where the owner is unknown, that is the distinction, it is the property of the Crown. The distinction referred to by Mr. Parker is, of course, that on which such cases as *Armory* v. *Delamirie* are based. But

this right of the Crown to property that has no other owner has been frequently stated by writers of great authority."

In *Armory* vs. *Delamirie*, 1 Strange 504, 1 Smith's Leading cases, 8th Ed. 679, the plaintiff, a chimney-sweeper's boy found a jewel and carried it to the defendant's shop to know what it was, and delivered it into the hands of the apprentice, who, under a pretense of weighing it, took out the stones. The master offered the boy three half-pence, and upon his refusal to accept it, delivered to him the socket without the stones. In a suit against the master it was held:

> "That the finder of a jewel, though he does not by such finding acquire an absolute property or ownership, yet he has such a property as will enable [him] to keep it against all but the rightful owner, and consequently may maintain trover."

In *"Bona Vacantia"* by F. A. Enever, the author says at page 13:

> "It is only under one special title that the King may claim property as *bona vacantia*. That title arises through the fact that, at a given moment, there is no person who can claim to be entitled to certain property through either of the two means of acquisition, viz., occupation or succession, and that such property would but for the prerogative right of the Crown have no owner. As nature abhors a vacuum, so does our law abhor that ownership be in abeyance, and moreover will not admit of it."

At page 13, the author after criticizing Blackstone's definition of *bona vacantia*, as including all goods which belong to the King, suggests the following definitions:

> "We may overcome the two objections to Blackstone's definition by stating that *bona vacantia* are

chattels real and personal which not being previously Crown property become through lack of other ownership the property of the Crown or other the persons entitled to such property by virtue of a grant thereof from the Crown."

In *Anderson National Bank* v. *Luckett*, 321 U. S. 233, 240, Chief Justice Stone said:

> "At common law, abandoned personal property was not the subject of escheat, but was subject only to the right of appropriation by the sovereign as *bona vacantia*. See 7 Holdsworth, A History of English Law (2d ed.) 495-496."

The only Volume 7 of Holdworth's "History of the English Law" which we have been able to find is dated 1926. In this volume the author at pages 495 to 496 considers the rule of the English common law, that the finder of abandoned property has a title thereto against all the world except the true owner, except in the case of treasure trove, wreck and waif, etc. We find nothing in this work which supports the statement that the Sovereign under the common law doctrine of *bona vacantia* has the right to appropriate property merely because it has been abandoned.

In Enever on *Bona Vacantia*, page 17, the author says:

> "So far as the law of England is concerned, title by occupancy is in many cases still recognized, so we are debarred from stating dogmatically that *bona vacantia* comprise all personal property to which ownership cannot be claimed by succession. Such personal property of which ownership is not derived by succession is either owned under the mere title of occupancy by a subject or under the doctrine of *bona vacantia* by the Crown or its grantees. Such

personal property may be classed under two headings:—

(1) That which has had a previous owner.

(2) That which has had no previous owner.

The former comprises property which belongs as *bona vacantia* to the Crown or its grantees, with this exception, that things lost or intentionally abandoned may be the subject of title by occupancy. The finder is entitled to these as against all persons save the true owner."

In *Attorney General* v. *Trustees of British Museum*, English Law Reports, 2 Chancery Division (1903) 598, 608, Farwell, J., quoting from Chitty on *Prerogatives*, page 1528, speaking of treasure trove, said:

"* * * 'If the owner, instead of hiding the treasure, casually lost it, or purposely parted with it, in such a manner that it is evident he intended to abandon the property altogether, and did not purpose to resume it on another occasion, as if he threw it on the ground, or other public place, or in the sea, the first finder is entitled to the property, as against everyone but the owner, and the King's prerogative does not in this respect obtain. So that it is the hiding, and not the abandonment, of the property that entitles the King to it.'"

See, also: *Illinois Bell Telephone Co.* v. *Slattery* (C. C. A. 7th, 1939), 102 Fed. (2d) 58 cert. den. 307 U. S. 648.

The right of the State of New Jersey, therefore, to take the property in question depends solely upon the Act of 1946, as amended in 1947. Unless the Act of 1946, as amended, is valid and lawfully authorizes the State, by following the procedure therein provided, to escheat the

property covered by the judgment, the judgment in this cause does not protect the appellant from liability to the stockholders and other claimants whose property is escheated. To compel the appellant to pay the claims and transfer the stock to the State without protecting it from such liability would take its property without due process of law.

The judgment of escheat does not protect the appellant from liability to the owners of the shares of capital stock and claims escheated, and therefore, deprives appellant of its property without due process of law.

This point will be considered under three subdivisions as follows:

1. Both the notice to the claimants as provided by the statute and the notice actually given were so inadequate as to amount to no notice.

2. The statute and the judgment thereunder impair the obligation of the contracts which are the bases of the claims of the respective stockholders and claimants in violation of Article I, Section 10, Paragraph 1, of the Constitution of the United States.

3. The shares of capital stock and claims covered by the judgment as modified by the State Supreme Court have no situs in New Jersey for the purpose of escheat and irrespective of the situs thereof the attempted seizure thereof was invalid.

It is well settled that the judgment of escheat does not protect the appellant from liability to subsequently satisfy the claims escheated by the judgment if the procedure pro-

vided by the statute and employed in this cause was invalid with respect to the claimants. The appellant, therefore, is entitled to present these points which are presented not in the interest of the claimants but in the interest of the appellant for its property is taken without due process of law if the judgment does not protect it from liability to the claimants with respect to such claims. See: *Security Savings Bank* vs. *California*, 263 U. S. 282, 286, 287; *Anderson National Bank* vs. *Luckett*, 321 U. S. 233, 242, 243.

Both the Notice to the Claimants as Provided by the Statute and the Notice Actually Given were so Inadequate as to Amount to no Notice.

The only statutory requirement for notice in the case at bar is contained in section 7 of the Act and is as follows:

> "A notice containing a summary of the order designating the time and place of hearing, as approved by the Court shall be published in a manner directed by the Court and shall also be published once a week for three successive weeks in a newspaper of general circulation designated by the Court; * * *. Such notice shall direct that any person who may claim to be entitled to the personal property mentioned in the petition, or to any part thereof or interest therein shall file with the Court his claim in writing, at least five days prior to the date fixed for the hearing." (Appendix 2a)

It will be noted that all that the statute requires the notice to contain is a summary of the order designating the time and place of hearing and that the notice shall direct that any person who may claim to be entitled to the personal property mentioned in the petition or to any part thereof or interest therein shall file with the Court his claim in writing at least five days prior to the date fixed for hearing.

The order fixing time and place for hearing (R. 53) neither contains the name of any claimant nor a designation of the character of any claim. It does not specify the cause of action. It refers to the petition, but the petition does not contain the name of any claimant or designate the character of any claim which any particular individual may have and which the State seeks to escheat. The summary of the order which is all that the statute requires the notice to contain would mean nothing to the owner of any of the claims if perchance it should come to his attention.

The order was made on the 21st day of March, 1949, and the time and place set for the hearing was the 27th day of April, 1949, at the Court House, State House Annex, Trenton, New Jersey. The only publication that the statute requires and the only publication that was made was a publication for three successive weeks in one newspaper of general circulation in Mercer County, New Jersey. The only opportunity that a claimant has to appear and be heard is to file his claim in writing at least five days prior to the date fixed for the hearing.

It is true that the order of the Trial Court (R. 53) provided that the notice published should be addressed to and contain the last known names and addresses of the persons or corporations apparently having unclaimed beneficial interest in or ownership of the personal property sought to be adjudged to escheat, subject to the proviso with respect to claims less than $50.000. The order of the Court did not expressly require that the character of such personal property should be specified in the notice nor that the reason for the claimed escheat should be stated therein.

The notice actually published (R. 55-59) was not addressed to anyone, although the body of the notice contained the names of twenty-one claimants and specified the property to which each of them appeared to have title.

We respectfully submit that the test of the validity of the Act with respect to notice and an opportunity to be heard is what may be done by complying with its provisions. If the Act itself fails to require adequate notice, the fact that the Court, although not required by the Act so to do, supplements the requirement of the Act, will not render either the Act or the procedure thereunder valid. *Wuchter* v. *Pizzutti*, 276 U. S. 13; *Security Trust Company* v. *Lexington*, 203 U. S. 323; *Coe* v. *Armour Fertilizer Works*, 237 U. S. 413; *Stuart* v. *Palmer*, 74 N. Y. 183 (Ct. of App. 1878); *Rassner* v. *Federal Collateral Soc. Inc.*, 299 Mich. 206, 300 N. W. 45 (Sup. Ct., 1941).

In *Wuchter* v. *Pizzutti*, *supra*, this Court said:

> "But it is said that the defendant here had actual notice by service out of New Jersey in Pennsylvania. He did not, however, appear in the cause and such notice was not required by the statute. Not having been directed by the statute it can not, therefore, supply constitutional validity to the statute or to service under it. *Coe* v. *Armour Fertilizer Works*, 237 U. S. 413, 424, 425; *Louisville and Nashville R. R. Co.* v. *Stock Yards Company*, 212 U. S. 132, 144; *Central of Georgia Ry. Co.* v. *Wright*, 207 U. S. 127, 138; *Security Trust Co.* v. *Lexington*, 203 U. S. 323, 333; *Roller* v. *Holly*, 176 U. S. 398, 409; *Stuart* v. *Palmer*, 74 N. Y. 183, 188; *Berryhill* v. *Sepp*, 106 Minn. 458. For these reasons, we think that the statute of New Jersey under consideration does not make provision for communication to the proposed defendant, such as to create reasonable probability that he would be made aware of the bringing of the suit."

The cases cited in *Wuchter* v. *Pizzutti* show that the decision in that case was not based upon the fact that it involved a personal judgment but upon the much broader

principal that the property rights of an individual may not lawfully be affected by a statutory judicial proceeding unless the statute provides for reasonable and appropriate notice to him and an opportunity to be heard.

In *Stuart* v. *Palmer*, 74 N. Y. 183 (Ct. of Appeals 1878), one of the leading cases cited in *Wuchter* v. *Pizzutti*, and which has many times been cited with approval by this Court, it was held that the statute imposing an assessment for a local improvement without notice to or hearing or opportunity to be heard on the part of the owner of the property to be assessed had the effect of depriving him of his property without due process of law. In the course of the opinion the Court said at page 188:

> "I am of opinion that the Constitution sanctions no law imposing such an assessment, without a notice to, and a hearing or an opportunity of a hearing by the owners of the property to be assessed. It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunity to be heard. It matters not, upon the question of the constitutionality of such a law, that the assessment has, in fact, been fairly apportioned. The constitutional validity of law is to be tested, not by what has been done under it, but by what may, by its authority, be done."

The Supreme Court of New Jersey, in its opinion, conceded that the statute would be invalid and the procedure thereunder would have no validity if the statute failed to provide for adequate notice and an opportunity to be heard. The Court said, however, 5 N. J. page 307 (R. 260):

> "And it is implicit in the statute that the notice shall identify the property of which escheat is sought

> and the last known owner. That is of the very nature of the notice thus prescribed. There could not be 'notice' within the view of the statute without identification of the subject matter of the proceeding."

It will be noted that the Supreme Court did not state that the statute required that the basis of the State's claim of escheat should be stated in the notice.

The dissenting opinion written by Chief Justice Vanderbilt said with reference to the notice, at page 311 (R. 263-264);

> "The notice to be given to the owners of the property of which escheat is sought is provided by R. S. 2:53-21. It does not require that the names and addresses of the last known owners be given, nor that the character of the property be specified, nor that the basis of escheat be set forth."

We concede that ordinarily this Court accepts the construction of a state statute adopted by the highest court of a State. We respectfully submit, however, that the meaning attributed by the New Jersey Supreme Court to the portion of Section 7 of the New Jersey statute which has above been quoted is not based upon anything expressed or reasonably implied in the statutory provisions. The language of the statute prescribes what shall be included in the notice and the court is authorized by the statute to approve any notice which complies with the statutory requirements. The fact that the trial court supplemented the requirement of the statute does not render the act or the procedure thereunder valid. Neither is the statute rendered valid by a construction thereof not supported by anything contained in the statute.

The above quoted language of the Supreme Court is equivalent to a statement that a notice which contained

only what the statute expressly requires would be no notice and, therefore, the court added to the statute a requirement which was not there. The excerpt from the dissenting opinion, which has been quoted abbve, is based upon the language of the act with no attempt at judicial legislation.

The case at bar differs widely from *American Land Company* v. *Zeiss*, 219 U. S. 47, in which it was held that the court would accept the construction of a statute of California which had been adopted by the Supreme Court of that state. In the *American Land Company* case, the construction placed upon the statute by the State Court was a reasonable construction fairly implied by the language of the statute. The language of the statute in the case at bar is so clear that there is no room for construing it otherwise than by the meaning of the words the Legislature used.

In *Scott* vs. *McNeal*, 154 U. S. 34, at page 45, this Court said:

> "Upon a writ of error to review the judgment of the highest court of a State upon the ground that the judgment was against a right claimed under the Constitution of the United States, this court is no more bound by that court's construction of a statute of the Territory, or of the State, when the question is whether the statute provided for the notice required to constitute due process of law, than when the question is whether the statute created a contract which has been impaired by a subsequent law of the State, or whether the original liability created by the statute was such that a judgment upon it has not been given due faith and credit in the courts of another state."

The objection to the notice in the case at bar is based upon the inadequacy of the statutory requirement which is

inadequate, even as construed by the State Supreme Court, as that Court did not construe the statute as requiring either that the character of the cause of action or the basis of the claim of the State should be stated in the notice.

The objection is also based upon the fact that in view of the character and purpose of the proceeding the publication three times in a newspaper published in Trenton, New Jersey, where none of the claimants resided or ever had resided as far as the record shows, was wholly inadequate.

The last known addresses of the persons whose property was escheated by the judgment of the trial Court were stated in the record of the case (R. 92-199) and are shown on page 5 hereof.

It is respectfully submitted that three weeks publication of the notice in a newspaper published in Trenton, New Jersey, was equivalent to no notice at all to most, if not all, of these individuals. It does not appear that any of them, except the comparatively few New Jersey residents, were ever in New Jersey or, in fact, had ever heard of the Trenton Times published in Trenton, New Jersey. There is no basis for the belief that anyone in New Jersey who might happen to see the notice would have any acquaintance with, or knowledge of any of these claimants.

Entirely aside from the question of the contents of the notice, the statutory requirements for publication and the publication actually made were a perfectly useless gesture which afforded none of the claimants the slightest opportunity to learn of the proceeding, or to appear and protect their interests.

Several of these claimants were the record holders of stock in the defendant Company, and each of them had claims for dividends which were enforceable against the

defendant Company, notwithstanding the period of time which had elapsed since they had communicated with the Company. In view of this fact, it is not realistic to suggest that by the judgment of the court they were not deprived of anything, for the effect of the judgment is to confiscate their stock and their claims against the Company for dividends without any real opportunity afforded them to assert their claims.

If any effort were really made to afford notice to these claimants by publication, the notice would have been published at the place of their last known addresses, for it is probable that even though they did not then reside there, some relative or acquaintance, if the notice came to his attention, would advise them of the pendency of the proceeding.

In *Cunnius vs. Reading School District*, 198 U. S. 458, cited in *Mullane* vs. *Central Hanover Bank & Trust Company*, 339 U. S. 306, the statute required that a notice be inserted for two successive weeks in a newspaper published in the county and also, when practicable, in a newspaper published at or near the place beyond the state where, when last heard from, the supposed decedent had his residence.

The mere fact that publication of a notice much better designed to reach the claimants might involve considerable expense is no adequate reason for failure to require such publication. The state has no interest in the property sought to be escheated. Its purpose is solely to enhance its revenues. The expense which might be involved in publishing adequate notice does not make the requirements of due process of law inapplicable. A notice which, as in the case at bar, is a mere gesture is equivalent to no notice.

As was well stated in the dissenting opinion of Chief Justice Vanderbilt, (R. 264):

"This notice, moreover, need only be published once a week for three successive weeks in a single newspaper, and the owner to whom it is supposedly directed must file his claim five days before the time fixed for the hearing. Such notice is wholly inadequate when it is borne in mind that the very purpose of the act is to extinguish the rights of persons whose names or whereabouts are unknown. Neither the information contained in the notice, nor the publication of it, nor the time allowed to file a claim are reasonably calculated to inform the owners of the property of the impending proceedings and to give them an opportunity to appear and protect their interests. The notice required by the Statute is, in effect, no notice at all to anyone."

The New Jersey Supreme Court relied in its majority opinion on the recent decision of this court in *Mullane* vs. *Central Hanover Bank & Trust Co.*, 339 U. S. 306.

We respectively submit that the State Court misapprehended the legal effect of such decision.

In the case cited, this court said at page 583:

"But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it was in itself reasonably certain to inform those affected, compare Hess *v.* Pawloski, 274 U. S. 352, 71 L. Ed. 1091, 47 S. Ct. 632, with Wuchter *v.* Pizzutti, 276 U. S. 13, 72 L. Ed. 446, 48 S. Ct. 259, 57 ALR 1230, or, where conditions preclude reasonable certainty of actual receipt of notice, and the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes."

The published notice in the *Mullane* case did not contain the names of the persons having a contingent interest in the trusts whose names and addresses were then unknown to the trustee.

It appears from the opinion in the *Mullane* case that this Court in determining that the inclusion of such names in the notice of settlement of account was not necessary, had regard to the nature of the proceeding and to facts in that case not present in the case at bar.

First, notice of the manner in which notice would be given of the settlement of the account had previously been given, pursuant to the statute, to the persons interested in each trust who were of full age and sound mind and whose names and addresses were then known to it. Second, the persons whose addresses were known, to whom notice was required by this Court to be mailed by the trustee, had a common interest in the due administration of the trust, with those to whom notice was not required to be mailed. Third, the statute provided for the appointment of a guardian for those having an interest in the income and who did not appear, and also a guardian for those having an interest in the corpus who failed to appear, so that all interests would be adequately protected. Fourth, it was essential that the accounts of the trustee be settled, and the expense of ascertaining the names and addresses of everybody then having a vested or contingent interest in the trust would have been very great, and, upon being charged to the trust, would have reduced the interests therein of the beneficiaries without any resulting benefit to them.

The case at bar differs widely from the *Mullane* case. First, none of the claimants whose property was escheated by the judgment have any interests in common. Each has a wholly independent claim. Second, the proceeding in the

case at bar was in no respect instituted for the benefit of the claimants. Its purpose was to enhance the revenues of the state by confiscating their property.

At the time of the institution of the proceeding each of the claimants had a vested right in their respective claims to shares of capital stock and dividends or to dividends alone, as the case may be, which right was enforceable against the appellant at any time. Their failure to assert their right to dividends or to keep the corporation advised of their respective addresses created only a rebuttable presumption of abandonment. They were entitled to an opportunity to appear in the proceeding and to rebut this presumption.

Even if it be assumed that they had knowledge of the escheat statute which was enacted long after their claims arose or that they are chargeable with such knowledge, it cannot be presumed that they had or could, by reason of the notice published, have secured any knowledge of the institution of the proceeding or of the time and place of hearing. The statute and the judgment thereunder takes their property and vests it in the state without affording them any real opportunity, either to learn of the proceeding, or to appear and protect their rights.

If the legislature had designedly attempted to comply with the form of due process of law and to utterly ignore its substance in order that the property of the claimants might be confiscated, we can think of no procedure which would be better adapted to accomplish that purpose.

The State Supreme Court also cited, in support of its holding, the cases of *Hamilton* v. *Brown*, 161 U. S. 256, and *Christianson* v. *King*, 239 U. S. 356. In *Hamilton* v. *Brown*, which was a proceeding to escheat land located in the State of Texas, the statute required that a *scire facias* be issued to all persons named in the petition, if in

possession of or claiming the estate, requiring them to appear and show cause why it should not be vested in the state. The statute further required an order of notice to be published four weeks in a newspaper printed within the state, stating briefly the contents of the petition and requiring all persons interested in the estate to appear and show cause why the land should not be vested in the state. The mere recital of these statutory provisions shows a wide difference between the notice in the case cited and the notice required by the statute here under consideration.

In *Christianson* v. *King County*, which was also a case of escheat of land, the petition showed that no heirs at law of the decedent had been found after diligent search. The decree was made after publication of a notice for four weeks in a local newspaper. The form of notice does not appear in the opinion and was not considered by the court as apparently no objection thereto was made. Neither of these cases was a confiscation case. They were both common law escheat cases in which the state takes the property because it has no other owner.

In neither of these cases did the state attempt to confiscate property simply because the owner thereof had failed to claim it for a designated period or had failed to keep a particular corporation advised of his address.

The State Supreme Court also cited on this point the decision of this Court in *Security Savings Bank* vs. *California*, 263 U. S. 282, and *Anderson National Bank* vs. *Luckett*, 321 U. S. 233.

The procedure in *Security Savings Bank* vs. *California* differed widely from the procedure in the case at bar. Each depositor was made a party to the proceeding. The summons naming each party was published for four weeks in a newspaper of general circulation published in Sacramento County. With the summons a notice also was pub-

lished requiring all persons, other than the named defendants, to appear and show cause why the moneys involved in the suit should not be deposited in the State Treasury. This procedure is set forth at pages 284 and 285 of the opinion of this Court and more fully in the opinion of the Supreme Court of California, 186 Cal. 419, 199 P. 791.

It also appears in the opinion of this Court at page 289 *et seq.* that a statute of California required the annual publication in a newspaper published in the city in which the bank was located of a statement showing the amount of each deposit therein, the name and last known residence of each depositor and the fact of his death, if known, in all cases where the depositor had not made a deposit or withdrawal for ten years next preceding unless the depositor was known to be living or the deposit was less than $50.00.

This Court said:

> "The fact that, after nine, or more, such publications in the local newspaper, a deposit remains unclaimed, affords the legislature some basis for thinking that the further publication provided for in these proceedings would be more apt to accomplish the purpose of actual service, if made in the county in which the state capital is located."

It does not appear in the opinion in the *Security Savings Bank* case that the last known addresses of the depositors were stated in the record, or that any of such last known addresses were in places remote from California.

In *Anderson National Bank* vs. *Luckett* it did not appear that the last known addresses of the depositors, whose deposits were unclaimed, were in places remote from the location of the bank. The procedure under consideration in that case did not divest the interests of the depositors. It

only provided for the payment of the deposits into the State Treasury, there to be held subject to the claim of the depositors. This Court expressly refrained from passing upon the validity of a proceeding to be subsequently instituted for the escheat of the deposits upon proof of actual abandonment.

We concede that this Court is reluctant to decide that the publication of a notice sustained by the highest Court of the State is inadequate because of failure to comply with the due process requirement. Unquestionably this Court has the power so to do. See *Roller* vs. *Holly*, 176 U. S. 398.

In *Bellingham Bay etc. Co.* vs. *New Whatcom*, 172 U. S. 314, the question involved was whether the publication of a notice of re-assessment of property in New Whatcom for an improvement, which notice was published for three days and required any property owner who wished to appear ten days from the last publication, was sufficient. The owner of property which questioned the adequacy of the notice had its principal office in the City of New Whatcom. In holding the notice sufficient this court said, at page 318:

> "It may be that the authority of the legislature to prescribe the length of notice is not absolute and beyond review, but it is certain that only in a clear case will a notice authorized by the legislature be set aside as wholly ineffectual on account of the shortness of time. The purpose of notice is to secure to the owner the opportunity to protect his property from the lien of the proposed tax or some part thereof. In order to be effectual it should be so full and clear as to disclose to persons of ordinary intelligence in a general way what is proposed. If service is made only by publication, that publication must be of such a character as to create a reasonable presumption that the owner, if present and taking ordinary care of his property, will receive the infor-

mation of what is proposed and when and where he may be heard. And the time and place must be such that with reasonable effort he will be enabled to attend and present his objections."

The above recited quotation is just as applicable to publication of a notice at a place and in circumstances where it is practically certain that the notice will never come to the attention of the persons interested as it is to a publication for an inadequate period.

The fact that under Section 18 of the Act any claimant who can satisfy the Court that he had no actual knowledge of the escheat proceedings has the right within two years after the entry of the judgment to apply to the Court to reopen the judgment of escheat does not validate the proceeding. If he succeeds in opening the judgment, he will receive not his shares of stock but only a part of the proceeds of the sale thereof. The amount received by the claimants is reduced by the 5% paid to the escheator and by the allowance made by the Court to the counsel for the State and also by any other expenses incurred by the State in the prosecution of the proceeding. Section 9 of Act of 1946, appendix page 5a.

We respectfully submit that because of the inadequacy of the notice the judgment of escheat deprives the claimants of their property without due process of law and that because of this fact, the statute and the judgment rendered thereunder are invalid and the judgment affords no protection to the appellant with respect to these claims.

The statute and the judgment thereunder impair the obligation of the contracts which are the basis of the claims of the respective stockholders and claimants in violation of Article I, Section 10, Paragraph 1, of the Constitution of the United States.

The only factual basis for the claimed escheat in the case at bar is:

(1) That the dividends have not been claimed for fourteen years; and

(2) That the whereabouts of the owners of record of the dividends and the whereabouts of the owners of record of shares of stock have been unknown for the period of fourteen years.

Prior to the enactment of said statute, the state had no power to deprive the owners of such property of the right to enforce their contracts against the appellant. Such owners could enforce such rights as stockholders not only in the State of New Jersey but also in other jurisdictions where the appellant was subject to suit. The statute and the judgment thereunder deprive them of these rights, and substitutes for the remedies which they previously had only a theoretical opportunity to appear in the proceedings above mentioned in New Jersey at the time fixed by the Court to rebut the presumption of abandonment raised by their failure to collect their dividends or to keep the appellant informed of their respective addresses. The opportunity is only theoretical, because the notice is published in such a manner as to make it certain that most, if not all of the claimants, will not learn of the pendency of the proceeding and will have no opportunity to assert their rights.

The right to apply to the Court to open the judgment within two years after its entry does not make the substi-

tuted remedy at all adequate. In the first place the stockholders are under no obligation either to collect their dividends within any specified time or to advise the appellant of their respective addresses, and if they delay any such action for two years after the entry of the judgment, they will not learn of it until it is too late to attempt to reopen it. In the next place, even if the judgment is reopened, the stockholders do not receive their stock or even the entire proceeds of its sale. Neither do they receive all of the dividends to which they are entitled.

We respectfully submit that the statute and the procedure thereunder resulting in the judgment under appeal, seriously impair and in fact destroy the contract rights of the stockholders.

In *Security Savings Bank* vs. *California*, 263 U. S. 282, this Court held that a statute escheating bank deposits did not impair the contract rights of the bank and in *Anderson National Bank* vs. *Luckett*, 321 U. S. 233, this Court held that a staute which required the bank to turn over unclaimed bank deposits to a state official of Kentucky, the deposit to be held for the benefit of the depositors, impaired no contract right of the bank.

Our contention is that the statute under consideration in this case and the judgment entered thereunder does not protect the appellant from the claims of its stockholders whose stock and dividends are escheated by the judgment because, as to them, the statute authorizing the judgment and the judgment entered thereunder are invalid as impairing the obligation of their contracts.

In *Connecticut Mutual Life Insurance Company* vs. *Moore* 333 U. S. 541, this Court held that the statute of New York involved in that case did not impair the obligation of contracts when its operation was confined, as this

Court confined it. That statute, however, differs from the statute under consideration in the case at bar because the person entitled to the proceeds of the insurance policies could at any time recover from the State the amount of their claims, and even the insurance company, if it subsequently paid the amount of the policy to the beneficiary, could recover from the state. The small deduction from the amount of the claim imposed by the New York statute was insignificant as compared with the deductions permitted by the New Jersey statute.

The New York statute was a conservation statute and the deduction was by way of compensation for the care by the state of the money belonging to the beneficiary. The statute involved in the case at bar is not a conservation statute, the judgment divests the interest of the stockholders in the property and vests the title thereto in the state. The deductions from the amount to be recovered if the stockholder succeeds in having the judgment opened under sec. 18 of the Act consist of 5% paid to the escheator, the fees allowed by the court to the counsel for the state and all expenses incurred by the state in confiscating the property which, in fact, has not been abandoned. Such expenditures were not made for the benefit of the stockholder but solely for the purpose of enhancing the revenues of the state.

With respect to these deductions the language of Mr. Justice Holmes in *Escher* vs. *Woods*, 281 U. S. 379, with reference to the deductions to be made from the amount to be paid to a claimant whose property had been wrongfully seized under the Trading with the Enemy Act and who had established his right to the property are applicable. In the case cited Mr. Justice Holmes said at pages 304 and 385

> "It would be extraordinary if the charges incident to a seizure that the law did not intend the Custodian

> to make and a possession that the law requires him to surrender, were to be imposed upon the owner whose interests were sacrificed up to the moment of restitution. It seems to be going far enough to require him to bear the loss that he has suffered, without compelling him to pay the Government for its outlay in doing him harm. See Hobbs v. McLean, 117 U. S. 567, 582."

In *Hendrickson* vs. *Apperson*, 245 U. S. 105, 113, this Court said:

> "The obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced,—by which the parties can be obliged to perform it. Whatever legislation lessens the efficacy of these means impairs the obligation."

See, also: *Bronson* vs. *Kinzie*, 1 Howard 311; *Von Hoffman* vs. *City of Quincy*, 4 Wallace 535; *Edwards* vs. *Kearzey*, 96 U. S. 595; *Seibert* vs. *Lewis*, 122 U. S. 284; *W. B. Worthen Co.* vs. *Thomas*, 292 U. S. 426.

As above stated, the claimants, prior to the enactment of this statute and the rendering of the judgment in this cause, had the right to enforce their contracts in the State of New York and as to some of them wherever the appellant may be served with process.

Under the statute and the judgment rendered in this cause they are deprived of all remedy for the complete enforcement of their contracts, because they did not appear in the New Jersey Court at the time stated in the notice. The statute, even as construed by the State Supreme Court, fails to require an adequate notice, and publication, as required by the statute, was in the circumstances of the case at bar but an idle gesture practically equivalent to no notice at all.

We respectfully submit that this legislation not only lessens the efficacy of the means of the claimants for enforcing their contracts but practically deprives them of their rights thereunder.

Neither the dividends on shares of capital stock nor the shares of capital stock escheated by the judgment had a situs in New Jersey for the purpose of escheat, and irrespective of such situs, neither such shares nor dividends were lawfully seized in the proceeding.

Section 7 of the Act of 1946, as amended in 1947, N. J. R. S. 2:53-21 (Appendix, page 2a), provides that the proceedings (for escheat under the Act) in the Court of Chancery shall be by petition in the name of the State of New Jersey, which petition shall set out that certain personal property therein designated has escheated to the State of New Jersey under the provisions of such Act and that the defendant named in such petition has custody or possession of such personal property.

Personal property is defined in Section 1 of the Act (Appendix, page 1a) N. J. R. S. 2:53-15 and includes moneys, negotiable instruments, choses in action, interest, debts or demands due to the escheated estate, stocks, bonds, deposits, machinery, farm crops, live stock, fixtures, and every other kind of tangible or intangible property, except certain excepted property not here material. The petition filed in the case at bar alleged in paragraph II that the defendant had in its "custody or possession" certain personal property which had escheated to the State of New Jersey, that such personal property consisted in the main of unclaimed cash dividends on its own stocks, stock dividends, stocks and bonds and interest on such bonds, debentures and other escheatable personal property (R. 1). Upon

the filing of the petition an order was issued that the "defendant retain in its custody or possession such escheatable personal property as it now has in its custody or possession until the further order of this Court" (R. 7).

The appellant admitted in its answer that its books of account showed that certain dividends on its stock and certain other claims against it had not been claimed by the persons entitled thereto fo. fourteen years and that it had no certain knowledge as to the present address of the record owners of certain shares of its outstanding capital stock. Except as above admitted, it denied paragraph 2 which was a denial that it had the custody or possession of any of the property specified in the petition (R. 8).

The only proof in the case is embodied in the stipulation (R. 60-206). This shows that the only property involved in the proceeding consists of (1) shares of the capital stock of the appellant, the whereabouts of the record owners of which had been unknown to appellant for fourteen years and (2) dividends and other choses in action which had been unclaimed for fourteen years. The State Supreme Court determined that all claims which were barred by the statute of limitations were not escheatable under the act. It held however that claims for dividends were not so barred (R. 257). The only claims covered by the judgment, as modified by the State Supreme Court are the claims of persons named in the published notice (R. 55-59) which include only claims for shares of common stock and claims for dividends (R. 262).

The appellant has had no place of business in New Jersey except its statutory registered office and has owned no tangible property in New Jersey since 1927 (R. 90). The Guaranty Trust Company of New York, a bank located and doing business in New York, is and since 1918 has been the transfer agent for the capital stock of the appellant (R. 67).

The claims for stock and dividends are, therefore, based upon contracts not made in New Jersey and not to be performed in said state. The last known address of one of the record owners of the shares of stock included in the judgment was in the State of New York. The last known address of one of such record owners of stock was in New Jersey. The last known addresses of the other record owners of shares of stock were in various states of the United States and in Mexico (R. 198-199).

These facts suggest two questions:

First, since the proceeding is a proceeding *quasi in rem* and the only basis of the Court's jurisdiction over the property is a seizure of such property in the custody or possession of the appellant, did the Court acquire any jurisdiction over the property in question since none of it was in the custody or possession of the appellant?

The second and more fundamental question is whether, in view of the facts above stated, any of the property covered by the judgment has a *situs* in New Jersey for the purpose of *escheat*.

The appellant had neither possession nor custody of any of the property included within the judgment as modified by the Supreme Court.

The proceeding is *quasi in rem*. See opinion of State Supreme Court (R. 259). The State acquired no jurisdiction over the property of the nonresidents included within the judgment, unless such property was seized by it at the institution of the proceeding.

The only property which the State was authorized to seize by the Act and the only property which it attempted to seize was property in the possession or custody of the appellant. As above stated, the appellant denied that it

had possession or custody of any of the property mentioned in the petition. The claims for dividends were either claims for debts due from the appellant or claims against the trust fund for the payment of dividends which the State Supreme Court held had been established when the Company, upon the declaration of dividends, deposited the amount thereof prior to 1918 in the National City Bank of New York and subsequent thereto in the Guaranty Trust Company of New York, in which last mentioned bank the deposit still remains (R. 72, 253).

The decision of the State Supreme Court was based upon the view that the owners of the unclaimed dividends had a claim against this trust fund which was not barred by the Statute of Limitations (R. 252-257).

The appellant had neither the custody nor possession of debts due by it to others.

In *State Tax on Foreign-held Bonds*, 15 Wall. 300, 320, this court said:

> "But debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors * * *. All the property there can be in the nature of things in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be."

It is unrealistic to hold that a corporation which owes a debt to a third party has possession or custody of the debt. It is equally unrealistic to say that a trust fund established in New York and there on deposit in a New York bank is property in the possession or custody of the appellant in New Jersey. The trust fund may only be reached by proceedings in the jurisdiction where it has been established and is located.

The attempted seizure of property in the possession or custody of the appellant is not a valid seizure of debts owing by the appellant to nonresidents or of a trust fund established in New York and there remaining.

The question whether any of the property had a situs in New Jersey for the purpose of escheat will be considered under our next heading. The contention here made is that no property was seized by the petition and order even if the power existed to seize such property for the purpose of escheat.

In *Phoenix Bank* vs. *Risley*, 111 U. S. 125, the Government of the United States filed a libel of information against "the estate, property, money, stocks, credits and effects to wit against $15,000 more or less belonging to the Bank of Georgetown, a corporation doing business at Georgetown in the State of South Carolina, which said $15,000 is now in cash and is now on deposit in the Phoenix Bank, a corporation doing business in the City of New York, all of which are owned by and belonging to and are the property of the said Bank of Georgetown." The Bank of Georgetown had a deposit in the Phoenix Bank. This Court held, however, that the libel and the proceedings thereunder had failed to seize the deposit because the deposit was merely a credit which the Bank of Georgetown had with the Phoenix Bank; that the Phoenix Bank had no property belonging to the Georgetown Bank.

The Court, after stating the facts, said at page 133:

> "It does not appear to us that any seizure or attachment of the debt due by the Phoenix Bank to the Georgetown Bank was made, by which the District Court, if it intended to do so, obtained jurisdiction to confiscate it."

It is, we respectfully submit, true that the shares of stock included within the judgment were not in the possession or custody of the appellant. The judgment states that the certificates for such stock were not in the possession or under the control of the appellant (R. 234).

It has long been established that the owner of a certificate of stock issued by the corporation to him or acquired by him by a valid transfer of the certificate is the owner of the stock. The appellant has possession and custody of its property, none of which is in New Jersey (R. 90) but it has neither the possession nor custody of the shares of capital stock issued by it which are in the custody or possession of the stockholders. These shares represent claims against the corporation, enforceable by the stockholders. The certificates themselves have many of the attributes of tangible property.

All of the certificates of capital stock included within the judgment are certificates for shares having a par value of $25.00 each and were issued by the corporation in 1920 or subsequent thereto, as the corporation had no outstanding certificates of stock having that par value prior to 1920 (R. 60-61).

In 1916 New Jersey adopted the Uniform Stock Transfer Act, N. J. R. S. 14:8-29 et seq.

Section 29 of this Act (R. S. 14:8-46) provides as follows:

> "The provisions of this article apply only to certificates issued after July fourth, one thousand nine hundred and sixteen."

The Act is, therefore, applicable to the certificates involved in this cause.

Section 4 of the Act (R. S. 14:8-30) provides as follows:

> "The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value, in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of the certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of the certificate and the written assignment or power of attorney of such person, though contained in a separate document."

Section 13 of said Act (R. S. 14:8-39) provides as follows:

> "No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it."

In view of the character of a certificate of stock, as property, it cannot be said that a seizure of property in the possession or custody of the defendant was any seizure at all of shares of stock owned by nonresidents, the certificates for which were neither in the custody nor possession of the appellant.

The shares of capital stock and dividends thereon had no *situs* in New Jersey for the purpose of escheat.

It is, we respectfully submit, clear that unless the State lawfully seized the claims for dividends of claimants who, so far as the record shows had never been in New Jersey, and the shares of stock of such claimants, the judgment which requires the appellant to pay these claims to the State and to issue shares of stock to the State in lieu of the shares owned by the nonresidents, the certificates for which are not within the possession or control of the appellant and not within the State so far as the proof shows, the appellant is not protected from liability to these claimants and stockholders and the statute which authorizes the judgment and the judgment entered thereunder would deprive the appellant of its property without due process of law.

The State Supreme Court sustained the validity of the statute and the judgment entered thereon, saying that the sovereignty in which the corporation lives and has its being has dominion over its debtor obligations through its control of the corporation (R. 262).

The State Supreme Court, therefore, held that the State of New Jersey has the power to confiscate rights owned by nonresidents, based upon contracts made with the appellant outside of the State of New Jersey and to be performed and enforceable outside of the State. This holding was based solely upon the fact that the appellant is a New Jersey corporation.

The New Jersey Supreme Court cited and relied upon: *Security Savings Bank* vs. *State of California*, 263 U. S. 282; *Anderson National Bank* vs. *Luckett*, 321 U. S. 233; *State Tax Commission* vs. *Aldrich*, 316 U. S. 174; *Northwest Airlines* vs. *Minnesota*, 322 U. S. 292; and *Connecticut Mutual Life Insurance Company* vs. *Moore*, 333 U. S. 541.

All of these cases are distinguishable from the case at bar. In fact, the case last cited is inconsistent with the decision of the New Jersey Supreme Court.

In *Security Savings Bank* vs. *State of California, Supra,* this Court sustained a statute of California which escheated unclaimed deposits in a Calfornia savings bank. In determining that the State of California had jurisdiction to escheat such deposits, this Court said at page 285:

> "The unclaimed deposits are debts due by a California corporation with its place of business there. *State* v. *Anglo & London Paris National Bank,* 186 Cal. 746, 753; *State* v. *Security Savings Bank,* 186 Cal. 419, 423. The debts arose out of contracts made and to be performed there. *Farmers & Merchants Bank* v. *Federal Reserve Bank,* 262 U. S. 649, 660. Thus the deposits are clearly intangible property within the State. Over this intangible property the State has the same dominion that it has over tangible property."

In *Anderson National Bank* vs. *Luckett, supra,* this court said at page 241:

> "The deposits are debtor obligations of the bank, incurred and to be performed in the state where the bank is located, and hence are subject to the state's dominion."

Citing, among other cases, *Security Savings Bank* vs. *California, supra.*

In the *Luckett* case the statutory provision there sustained did not confiscate the claims of the depositors. It merely provided for the transfer of the custody of the deposits to an officer of the State to remain subject to the claims of the depositors, unless and until an escheat

proceeding should be instituted in which proof of actual abandonment was required as a condition of escheat.

Attention is called to the fact that the jurisdiction to escheat in the *Security Savings Bank* case was based not only upon the fact that the bank was a corporation of California but that its place of business was in that state and that the debts arose out of contracts made and to be performed there and that this Court relied upon the same facts in the *Luckett* case. An important distinction between the two decisions above mentioned and the case at bar is not only that the contracts were made in the State in question but also that the assets of each of the banks involved were actually in the State in which the bank was located and the judgment could be enforced only in such State. In the case at bar the appellant has no tangible assets in New Jersey. A judgment against it could not be collected without going to the jurisdiction in which its assets are located.

The basis of the decision in *State Tax Commission* vs. *Aldrich, supra,* is that the transfer of shares of capital stock from the dead to the living depends upon and involves the law of the domicile of the corporation, and also the law of the domicile of the decedent, even though such transfer might lawfully be made in the state in which the decedent was domiciled at the time of his death. The governing principle in the case cited affords no support to the confiscation of shares of stock of nonresidents by the state of the domicile of the corporation. A very different situation would have been presented in the *Aldrich* case if the State of Utah, where the corporation was domiciled, and the State of New York, where the certificates were located, had each provided for the confiscation of the shares of stock upon the death of the decedent, as well as for the confiscation of all unpaid dividends thereon.

In *Northwest Airlines* vs. *Minnesota, supra,* this Court sustained a property tax imposed under the laws of Minnesota on all of the airplanes of Northwest Airlines, which was a Minnesota corporation, having its principal place of business in St. Paul, upon the ground that, in the circumstances present in that case, the airplanes were tangible property within the State of Minnesota. This Court said at page 294:

> "Minnesota is here taxing a corporation for all its property within the State during the tax year no part of which receives permanent protection from any other State. The benefits given to Northwest by Minnesota and for which Minnesota taxes—its corporate facilities and the governmental resources which Northwest enjoys in the conduct of its business in Minnesota—are concretely symbolized by the fact that Northwest's principal place of business is in St. Paul and that St. Paul is the 'home port' of all its planes. The relation between Northwest and Minnesota—a relation existing between no other State and Northwest—and the benefits which this relation affords are the constitutional foundation for the taxing power which Minnesota has asserted."

Mr. Justice Jackson wrote a concurring opinion in which he said at page 305:

> "Domicile of an owner is a usual test of power to tax intangibles, but has not generally been a conclusive test of taxability of tangible property situated elsewhere. If we should suppose that this corporation had a Delaware charter instead of a Minnesota one, and had nothing in Delaware except its agent, but operated otherwise in Minnesota exactly as it has done, would we say that the entire right to tax the fleet moved to Delaware because it was the corporation's state of domicile? I do not

> think that domicile, in the facts of this case, is decisive of Minnesota's claim to tax the tangible property of the company wherever situate."

The basis upon which tax laws are sustained as valid is well stated in *Union Refrigerator Transit Company* vs. *Kentucky*, 199 U. S. 194, 202, as follows:

> "The power of taxation, indispensable to the existence of every civilized government, is exercised upon the assumption of an equivalent rendered to the taxpayer in the protection of his person and property, in adding to the value of such property, or in the creation and maintenance of public conveniences in which he shares, such, for instance, as roads, bridges, sidewalks, pavements, and schools for the education of his children."

While the case above cited involved the taxation of tangible property, the principle of the above recited excerpt from the opinion is applicable to the taxation of intangible property.

Intangile property may have a *situs* for the purpose of taxation at the same time in more than one jurisdiction, because both states afford protection and benefits to the property taxed and to the taxpayer who is the owner thereof. The principle which sustains such double taxation has no application to escheat because by the escheat the owner of the intangible is deprived of his entire interest therein.

The decision of this Court in *Connecticut Mutual Life Insurance Co.* vs. *Moore, supra*, not only affords no support to the decision of the State Supreme Court but, in fact, supports a result directly contrary to such decision. In the case last cited this Court held that insurance companies incorporated under the laws of states other than the State of New York but doing business in such state could law-

fully be required by a statute of New York to pay over to that state the proceeds of insurance policies unclaimed for a designated period, where the policy was issued for delivery in New York upon the life of a person then resident therein, if the insured was a resident of New York and the beneficiary also was a resident of such State at the maturity of the policy. With respect to the jurisdiction of New York this Court said at page 548:

> "The question is whether the State of New York has sufficient contacts with the transactions here in question to justify the exertion of the power to seize abandoned moneys due to its residents."

It was urged by the appellants in the case last cited that only the state of incorporation of the insurance companies had the power to escheat unclaimed moneys, but this contention was not sustained. This Court, however, did not pass upon the validity of the New York statute in instances where the insured persons, after delivery of the policy, ceased to be residents of New York or where the beneficiary was not a resident of New York at the maturity of the policy. This Court in the case cited did not in terms decide that the proceeds of abandoned policies which this Court determined could lawfully be claimed by New York could not also be claimed by the state of the domicile of the corporation.

Since, however, there may be but one escheat of the same property, the necessary result of this decision is that the proceeds of insurance policies issued by foreign insurance companies which New York had the power to escheat could not lawfully be also escheated by the state of the domicile of the corporation.

It was pointed out by Mr. Justice Jackson in his dissenting opinion that one of the insurance company plain-

tiffs was a Pennsylvania corporation and that under the law of Pennsylvania, the proceeds of the same policies which New York claimed were escheatable in that State and that the effect of the prevailing opinion of the Court was to strike down the right of Pennsylvania.

Applying the doctrine of *Connecticut Mutual Life Insurance Company* vs. *Moore, supra,* to the facts of the case at bar, the contracts upon which the claims in this case are based were made in the State of New York to be performed in the State of New York by a corporation having its executive offices in New York, which corporation has no place of business in New Jersey and owns no tangible property therein. The claimants who were named in the published notice of hearing (R. 56-58) are the only claimants whose property is escheated by the judgment of the Trial Court, as modified by the Supreme Court (R. 262). The last known addresses of six of these claimants were in the State of New York (R. 56-58). There is no evidence in the case that they do not still reside in that State. The last known address of only one of these claimants was in New Jersey (R. 57). The decision in *Connecticut Mutual Life Insurance Company* v. *Moore* supports the view that as to any claimant now resident in New York, New York has the right to escheat the claims, and if New York has such right, New Jersey has it not.

If New Jersey has no lawful power to escheat these claims, the judgment in this cause is *coram non judice* and affords no protection to the appellant from liability to the claimants and to compel the appellant to transfer these claims to the state would take its property without due process of law.

The fact that the appellant is a corporation of New Jersey does not confer upon New Jersey exclusive jurisdiction over the shares of its stock. The stockholders whose

claims are escheated by the judgment in the case at bar may assert their claims to the stock in New York or in any other jurisdiction where the corporation is suable unless barred by the judgment in this cause.

In *Direction Der Disconto-Gesellschaft* vs. *United States Steel Corporation* (Dist. Ct., S. D. N. Y., 1924), 300 Fed. 741, suit was instituted by the plaintiffs against United States Steel Corporation and the Public Trustee of England to compel the United States Steel Corporation, a corporation of New Jersey, to establish the plaintiff's title to certain shares of stock of the Steel Corporation, which title that corporation had refused to recognize because of the claims of the Public Trustee of England.

The plaintiffs were two German corporations, one of which maintained a local branch in the City of London at the outbreak of World War I. Each of them had owned certificates for shares of stock of the United States Steel Corporation. The registered owners of the shares as they appeared on the books of the corporation and in the certificates of stock were British subjects domiciled in England. Each certificate, however, had been endorsed in blank. The certificates had been seized by the Public Trustee of England as enemy alien owned property. They had been issued prior to the enactment of the Uniform Stock Transfer Act by the legislature of New Jersey and were therefore not subject thereto. The Court held that under the laws of New Jersey title to the shares of stock was in the owner of the duly endorsed certificates and that under the law of England the Public Trustee secured the title to the certificates by the seizure thereof. At page 745 the court said:

> "It is scarcely necessary to say that, if the shares are identified with the certificates, they pass

as chattels, and the law of the place of transfer controls, certainly when there is a local statute which is relevant. *Green* v. *Van Buskirk*, 5 Wall. 307, 18 L. Ed. 599. There are many cases which do so identify them, and perhaps these should serve, without more." Citing cases.

The court referred to *Jellenik* vs. *Huron Copper Mining Company*, 177 U. S. 1, as a case often cited to show that corporate shares can have no *situs* except at the domicile of the corporation. In reference to this case the court said, at page 746:

> "It holds nothing of the sort; only that they do have a *situs* there, which is a very different matter. In truth, corporate shares have a *situs* in both places, so long as we insist upon applying to them a word drawn from the law of land and chattels, which must be in a single place at a time."
>
> • • • • • •
>
> "Similarly, where the shareholder is, there the share may be transferred by compulsion, and perhaps, since he is subject to compulsion, by decree *in rem*, even when he does not obey."

The *Disconto* case was affirmed by this Court in an opinion written by Mr. Justice Holmes, 267 U. S. 22. In the course of the opinion Justice Holmes refers to the opinion of the District Court as leaving nothing to be added.

Mr. Justice Holmes said at page 28:

> "The appellants, starting from the sound proposition that jurisdiction is founded upon power, overwork the argument drawn from the power of the United States over the Steel Corporation. Taking the United States in this connection to mean the total powers of the Central and the State Governments, no doubt theoretically it could draw a line of

fire around its boundaries and recognize nothing concerning the corporation or any interest in it that happened outside. But it prefers to consider itself civilized and to act accordingly. Therefore New Jersey having authorized this corporation like others to issue certificates that so far represent the stock that ordinarily at least no one can get the benefits of ownership except through and by means of the paper, it recognizes as owner anyone to whom the person declared by the paper to be owner has transferred it by the indorsement provided for, wherever it takes place. It allows an indorsement in blank, and by its law as well as by the law of England an indorsement in blank authorizes anyone who is the lawful owner of the paper to write in a name, and thereby entitle the person so named to demand registration as owner in his turn upon the corporation's books. But the question who is the owner of the paper depends upon the law of the place where the paper is."

In *Wirt Franklin Petroleum Corporation* vs. *Gruen*, 139 Fed. 2d, 659, C. C. A. 5th, it was held that the Federal District Court in Texas had jurisdiction of a proceeding to garnishee shares of stock of a corporation chartered under the laws of Delaware where the stock books and bulk of corporate property and business were located in Texas. The Court said in part at page 660:

"Indeed, where a domicile in fact is shown to exist, corporate convenience is subserved by litigation where the corporation actually is, rather than where its fictitious citizenship exists. It is also true that the forum of the domicile in fact has a better claim to jurisdiction over the *res* than has the domicile of charter grant, because the stock books and the bulk of the corporate properties and enterprises are there."

In *Klein* vs. *Wilson & Co.* (Dist. Ct. N. J., 1924), 7 Fed. (2d) 769, aff'd on opinion below (C. C. A. 3rd, 1925), 7 Fed. (2d) 777, a bill of complaint was filed by a stockholder of Wilson & Co., a New York corporation, for the appointment of a receiver of that corporation on the ground of insolvency. Wilson & Co. had no assets in New Jersey but it owned all of the capital stock of Wilson & Co., a New Jersey corporation, which had property and assets in New Jersey. The certificates for such stock were in the possession of the New York corporation in New York. The court held that the New York corporation had no assets in New Jersey which would warrant the appointment of a receiver in that state, that the *situs* of the stock of the New Jersey corporation was in New York where the certificates were held.

In *In re Rapoport's Estate* (Sup. Ct., 1947), 317 Mich. 291, 26 N. W. (2d) 777, cert. den. 332 U. S. 764, it was held that certificates of corporate stock, bonds and a bank account being a part of the estate of a decedent who died domiciled in California but which certificates and bonds at the time of his death were in Detroit, Michigan, and which bank account was in a Detroit bank, were property in the State of Michigan and subject to escheat by the State of Michigan the decedent having died intestate leaving no one capable of taking his estate. The litigation was between the California administrator and the administrator in Michigan.

As was said in *Miller* vs. *Kaliwerke Aschersleben Aktien-Gesellschaft*, 283 Fed. 746, (C. C. A. 2nd, 1922) at page 757:

> "It may be conceded that, if a corporation issues a certificate of stock, the general rule is that, so long as it is outstanding, it is a continuing affirma-

tion that the person named therein is the owner of the number of shares specified therein and has a right to transfer the same, and that the corporation is estopped to deny the holder's right to make such transfer as against a bona fide purchaser; and it is settled that in this matter a voting trust certificate and a stock certificate do not differ."

This case arose under the Trading with the Enemy Act in which it was held that the Alien Property Custodian, proceeding under the Trading with the Enemy Act which was enacted under the constitutional war power, might seize shares of stock without seizing the certificate. The Court said that such a seizure would be valid. The Court said, however, at page 757:

"The nonenemy bona fide holder, however, cannot be deprived of his property except by due process of law; and unless the acts of Congress have made ample provision for the protection of his rights the proceeding must fail."

The Court then referred to the fact that under Section 9 of the Trading with the Enemy Act, as amended by the Act of July 11, 1919, any person claiming an interest in the stock seized had a right to institute suit against the Government.

In *Garvan* vs. *Marconi Wireless Telegraph Co. of America,* 275 Fed. 486, (D. C. D. New Jersey, 1921), another case under the Trading with the Enemy Act, the Court said, at page 488:

"Before outstanding certificates of stock may be cancelled and new ones issued in lieu thereof, in time of peace, a corporation is justified, both by reason and legislative enactment, to require the production of the old certificates. But the act under

which the Alien Property Custodian is proceeding is a war measure."

The war power of the Federal Government is much more extensive than the power of a State to confiscate property belonging to a nonresident simply because the nonresident has failed to claim his property, or to furnish to the corporation against which the claim may be asserted knowledge of his address.

It is well settled that neither the laws of a state nor a judgment entered under such laws has any operation beyond the boundaries of such state, except as required by the full faith and credit clause of the Federal Constitution and that such clause has no application to a judgment rendered by a Court which has no jurisdiction of the cause or of the parties.

It is also well settled that the claims of a nonresident of a state against a resident are not located within the state for all purposes: A state bankruptcy act which purports to discharge a resident of the state from all indebtedness upon the surrender of his property for distribution among his creditors does not discharge a debt due from the resident to a nonresident who does not present his claim and thereby submit it to the jurisdiction of the state court.

In *Ogden* vs. *Saunders*, 12 Wheat. 213, 358, *et seq.*, suit was instituted in Louisiana by a citizen of Kentucky against the plaintiff in error, a citizen of Louisiana. The defendant pleaded a certificate of discharge from all his debts under the insolvent laws of the State of New York where he then resided. Judgment was rendered for the plaintiff and the defendant appealed to this Court. The opinion of this Court was written by Mr. Justice Johnson and commences at page 358. At page 368 Justice Johnson said:

> "I, therefore, consider the discharge, under a state law, as incompetent to discharge a debt due a citizen of another State; and it follows that the plea of a discharge here set up, is insufficient to bar the rights of the plaintiff."

See also: *Boyle* vs. *Zacharie and Turner*, 6 Peters 348; *Denny* vs. *Bennett*, 128 U. S. 489; *Gilman* vs. *Lockwood*, 4 Wall. 409; *Clark* vs. *Williard*, 294 U. S. 211.

While it is conceded that the cases last above cited deal with a situation different from the case at bar, it is, nevertheless, true that in the case at bar the State is seeking to confiscate shares of stock and dividends of nonresident creditors and stockholders solely on the ground that the appellant against which the claims may be asserted is a corporation of New Jersey. The state, however, has no control over the nonresident creditors and stockholders and is not warranted in confiscating their claims, particularly since the situation is such that their claims are based upon contracts made outside of the state and are claims against a corporation having neither any property or any place of business in the state and may be asserted against the appellant in jurisdictions other than New Jersey.

Conclusion.

We respectfully submit that the judgment under review deprives the appellant of its property without due process of law. The judgment is invalid with respect to the stockholders and owners of the dividends, because the statute provides a procedure for a notice to the claimants which is equivalent to no notice at all and affords them no real opportunity to assert their rights; second, because the judgment impairs the obligation of their contracts by depriving them of all remedy thereunder, except a purely

theoretical remedy to appear and assert their rights in a proceeding of which they never can learn; third, because the State had no power to seize the property of these persons, and even though it had such power, the procedure adopted did not constitute a valid seizure.

While the amounts involved in the case at bar are relatively small, the case is a test case, the decision of which will govern more than one hundred other cases now pending in the Superior Court of New Jersey which have been instituted against other New Jersey corporations based upon the provisions of the New Jersey Escheat Act of 1946, as amended in 1947. These cases in the aggregate involve a very large sum of money and the individual claims in some of such cases are very substantial.

Respectfully submitted,

JOSIAH STRYKER,
Attorney of and Counsel for
Appellant.

APPENDIX.

1. "The term 'personal property' as used in this act shall mean and include moneys, negotiable instruments, choses in action, interest, debts or demands due to the escheated estate, stocks, bonds, deposits, machinery, farm crops, live stock, fixtures, and every other kind of tangible or intangible property and the accretions thereon, up until the time of the filing of the bill of escheat, but shall not mean and include real property or property in the custody of any court in this State, nor any personal property covered by chapter one hundred ninety-nine of the laws of one thousand nine hundred and forty-five.

"Unless a different meaning clearly appears from the context, the word, phrase or term 'owner', 'beneficial owner', 'person', 'person having custody or possession', 'person having any interest', 'person entitled to', or any word, term or phrase of similar import, shall mean, include and refer to corporations, companies, associations, societies, firms, partnerships, joint stock companies, fiduciaries of any nature, as well as individuals. . . . as amended, L. 1947, . . . page 1157."

2. "If any person, who, at the time of his death, has been or shall have been, the owner of any personal property within this State, and shall have died, or shall die, intestate, without heirs or known kindred, capable of inheriting the same, and without leaving a surviving spouse, such personal property, of whatsoever nature, the same may be, shall escheat to the State."

3. "Whenever the owner, beneficial owner, or person entitled to any personal property within this State, has been or shall be and remain unknown for the period of fourteen successive years, or whenever the whereabouts of such owner, beneficial owner or person, has been or shall be and remain unknown for the period of fourteen successive years, or whenever any personal property wherever situate

has been or shall be and remain unclaimed for the period of fourteen successive years, then, in any such event, such personal property shall escheat to the State. . . . as amended L. 1947, . . . page 1158 . . ."

4. "The Court of Chancery shall have jurisdiction in all cases where an escheat has occurred or shall occur under the provisions of this act. . . . as amended L. 1947, . . . page 1158 . . ."

5. "Whenever, by reason of any information filed with the Attorney-General, or which comes to his notice so that he shall become aware of the fact that any personal property has escheated or is supposed to have escheated to this State under the provisions of this act, he shall appoint some suitable person or persons to act as escheator of such property."

6. "Such escheator, when so appointed, shall proceed to collect and furnish to the Attorney-General or to such attorney or counsellor-at-law as he may designate, all the facts, information and evidence necessary to successfully prosecute the escheat in the Court of Chancery of this State."

7. "The proceedings in the Court of Chancery shall be by petition, in the name of the State of New Jersey, which petition shall set out that certain personal property therein designated has escheated to the State of New Jersey under the provisions of this act, and that the defendant named in such petition has custody or possession of such personal property. Such petition shall contain such other information as may be pertinent to the issue and shall petition the court to enter a decree escheating the personal property mentioned in said petition to the State of New Jersey. Such petition may describe in general terms the type or kind of such personal property, and may set forth:

"(a) That the defendant named in such petition has custody or possession of such personal property, and that the owner of, beneficial owner of, or person entitled to, the same has been and remains unknown for the period of fourteen successive years; or

"(b) That the whereabouts of such owner, beneficial owner or person entitled to such personal property has been and remains unknown for the period of fourteen successive years; or

"(c) That such personal property of such owner has been and remains unclaimed for the period of fourteen successive years; or

"(d) That the owner of such personal property has died intestate without heirs or known kindred capable of inheriting the same and without leaving a surviving spouse.

"Such petition may combine more than one of the above contingencies and relate to more than one person. The person having possession of such personal property may, after the filing of such petition, be required by an order of the Court of Chancery to furnish to the Attorney-General, or his deputy appointed to prosecute the action, all information such person having possession of such personal property may have with relation to the last known address of any person having any interest in, together with any other information relating to, such personal property.

"The Court of Chancery shall, upon the filing of such petition, make an order requiring the defendant to answer the petition within a time therein limited. Such order shall contain such other directions as the court may deem appropriate for the speedy determination of the cause, the protection of the property, or for the disclosure of information pertinent to the prosecution of the cause. A copy of the petition and order shall be served upon the defendant in the manner provided in the said order, whereupon the defendant shall, within the time limited, answer said petition and comply with said order. Upon the filing of defendant's answer, and his compliance with such order, the

court shall, by a further order, designate a time and place for the hearing of said petition.

"A notice containing a summary of the order designating the time and place of hearing, as approved by the court shall be published in a manner directed by the court and shall also be published once a week for three successive weeks in a newspaper of general circulation designated by the court; *provided, however,* that in the event the value of the personal property of any one owner is less than fifty dollars ($50.00), publication may be dispensed with if the the court so directs. Such notice shall direct that any person who may claim to be entitled to the personal property mentioned in the petition, or to any part thereof or interest therein, shall file with the court his claim in writing, at least five days prior to the date fixed for the hearing. . . . as amended L. 1947, . . . p. 1158 . . ."

8. "Any person claiming to be entitled to the personal property described in the petition, or to any part thereof, or to any interest therein, shall file his claim in the general form of an answer to the petition, which answer shall set forth in such detail as the court may require why the answering party contends that the property mentioned in the petition should not escheat to the State and, if the answering party shall claim any right to or interest in said property, the nature thereof; and the court shall at the time of hearing take such evidence as may be proper, and proceed to determine the cause and enter such final decree as shall be equitable and just and in conformity with the provisions of this act. Such decree may determine the title to such personal property, and where the court shall find that such personal property, in whole or in part, has escheated to the State the decree shall so declare, and such personal property, or so much of it as the court shall decree, shall thereupon escheat to the State.

"In the event no answering pleadings be filed within the time fixed by order of the court, the court may proceed upon the petition alone and enter a decree declaring that the property described in the petition has escheated to the State.

"All the proceedings outlined herein shall be in conformity with the rules and practice of the Court of Chancery except as herein otherwise specified. . . . as amended L. 1947, . . . p. 1160."

9. "Upon the filing of a final decree escheating personal property, the person having such property in their possession shall forthwith deliver the same to the Treasurer of the State of New Jersey. If such personal property be in the form of money, the Treasurer shall pay the same into the general funds of the State; if in the form of negotiable securities, he shall sell the same and deposit the proceeds thereof into the treasury of the State; if in the form of other personal property, it shall be his duty to give public notice thereof and shall then proceed to sell the said property at public or private sale, as he may deem to the best interests of the State, and shall deposit the proceeds thereof in the general funds of the State.

"Before so depositing the proceeds of said escheated property in the public fund, he shall deduct therefrom five per centum (5%) of the moneys so received and shall pay the same to the escheator as a reward for having supplied the information and evidence upon which the escheat has been successfully prosecuted and shall pay such other fees and costs as the decree shall direct.

"The Court of Chancery shall, in its final decree, fix the fees and expenses of the attorney or counsellor who shall have prosecuted the escheat in the Court of Chancery. The fees and expenses shall be deducted from the moneys received by the State Treasurer or from moneys realized by him from the sale of said personal property and shall be paid by him as directed by said decree."

10. "Any decree entered pursuant to the act to which this act is a supplement, shall automatically operate as a full, absolute and unconditional release and discharge of the person having such property in possession or custody from any and all claim, demand, or liability to any person whatever other than the State Treasurer with respect to

such property, and such decree may be pleaded as an absolute bar to any action brought against such person with respect to such property by any person other than the State Treasurer. L. 1947 . . . p. 1161, . . . supplementing L. 1946, C. 155."

11. "In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it shall be lawful for the Attorney-General or his deputy as designated herein to file a bill of discovery in the Court of Chancery requiring any such person or persons, named in such bill, to divulge any information they may have concerning the possession or location of any property subject to escheat, or any other information pertinent to the recovery of such property by the State of New Jersey or which information may lead to the discovery of such escheatable property."

12. "All proceedings in escheat in the Court of Chancery shall be without costs to the State or to the parties defendant except that the court may impose such costs or counsel fees against a defendant where such defendant shall be found by the court to have defended the escheat proceedings without reasonable cause or justification."

13. "It shall be lawful to join more than one escheatable property or estate and more than one defendant having possession thereof in one bill where it appears that the amount of escheatable property in each case does not exceed one thousand dollars ($1,000.00)."

14. "Any person aggrieved by an order or decree of the court, declaring or denying the escheat of any personal property, may appeal therefrom and the proceedings upon such appeal shall be as in the case of appeals from any order or decree of the Court of Chancery."

15. "The title to property acquired by purchasers sold under and by the provisions of this Act shall be absolute."

16. "The Attorney-General or his deputy as designated herein shall at all reasonable times have access to and be entitled to certified copies of all public papers and reports filed with any department of the State Government, free from any cost, charge or fee."

17. "Upon the final determination of an adjudication in any escheat proceedings provided herein, the Attorney-General shall cause a duly certified copy of such adjudication or decree to be transmitted to the State Treasurer."

18. "Any person whose property may have escheated to the State as provided herein, or any rightful heir entitled to such property by descent, may, within two years after the filing of the final decree in the Court of Chancery, apply to said Court of Chancery to reopen the said decree and upon proof that they were without actual knowledge of such escheat proceedings, and of proof of ownership of such property or the right to possession thereof, the court may in its discretion reopen the decree and in the event that the aforesaid decree in part or in whole be revised or amended, the court may direct the State Treasurer to repay such part of the moneys received by the State Treasurer by reason of such decree, to the party or parties in the amended decree entitled to have the same, and upon the entry of such final decree the State Treasurer shall repay the said moneys as provided in such decree; *provided, however,* that there shall first be deducted all expenses and charges that may have accrued or been paid out by reason of the entry of the original decree."

19. "The provisions of this act are severable, and in the event of any provision hereof being declared unconstitutional, it is hereby declared as the legislative intent that such unconstitutional provision shall not affect any other provision of this act."

APPELLANT'S REPLY BRIEF

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Appellant,

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY.

APPELLANT'S REPLY BRIEF.

JOSIAH STRYKER,
Attorney of and Counsel for Appellant.

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY.

APPELLANT'S REPLY BRIEF.

Appellee's Argument with Reference to the Power of the State to Escheat Personal Property.

This appeal does not challenge the power of the State to escheat personal property subject to its jurisdiction for the purpose of escheat pursuant to the provisions of a valid statute. Our contention is that the right of the State to take property, the whereabouts of the owner of which have been unknown to the Appellant for fourteen years and personal property which has been unclaimed for fourteen years rests not upon the common law, but solely upon the Act of 1946, as amended, and that that Act violates: (1) the due process of law provision of the Fourteenth Amendment of the United States Constitution; (2) the provision of Article

I, Section 10, paragraph 1, of the Constitution of the United States which prohibits a state from enacting any statute which impairs the obligation of a contract; and (3) that because of the foregoing, the appellant is not protected by the judgment in escheat from subsequent liability to the persons whose property is escheated by the judgment. To compel the appellant to satisfy the judgment of escheat is, in these circumstances, to take its property without due process of law. We, of course, concede that the legislative power of the State is restricted only by the express and implied provisions of the Constitution of the United States and of the State.

Point Two of Appellee's Brief with Reference to Due Process.

Appellee contends that the Appellant has no standing to raise the question of due process because, as claimed by it, the Appellant has no interest in the property escheated. This contention is considered at pages 16 and 17 of our main brief.

In *Anderson National Bank* vs. *Luckett* (1944), 321 U. S. 233, this Court said at pages 242 and 243:

> "But if the statute is deficient in its provisions for notice and opportunity for hearing so that the depositors would not be bound by any proceedings taken under it, the bank would be entitled to raise the question whether its obligation to the depositors would be discharged by payment of the deposits to the state."

The statutory notice and the notice actually published in the case at bar were equivalent to no notice at all to the claimants. We do not contend that, if it were assumed that the claims escheated by the judgment in the case at bar had

a situs in this State for the purpose of escheat, that it was beyond the power of the legislature to provide for notice by publication. It is our contention that the notice prescribed by the statute was of such a character as to be no notice to any claimant who perchance might see it, and that the statutory provisions for publication were of such a character as to make it practically certain that no claimant would ever see the publication.

At the top of page 22 appellee quotes from the language of the opinion of this Court in *Anderson National Bank* vs. *Luckett*, 321 U. S. 233, in which this Court said that the question of due process depends upon the taking into account of the purpose of the procedure and its effect upon the rights asserted, as well as all other circumstances which may render the proceeding appropriate to the nature of the case.

The purpose of the procedure in the *Luckett* case was not to deprive the depositors of their property and to vest such property in the State but merely to require the bank to turn over the deposit to the State to be held by the State subject to the claims of the depositors. The judgment in the case at bar vests the property in question in the State and deprives the owners thereof of all interest therein.

The appellee contends that the seizure of the property is notice to the claimant citing in support of this contention *The Mary*, 9 Cranch 126, 144. In the case cited the procedure was strictly *in rem*. The ship seized was in the possession of the captain who represented the owner and who was under a duty to notify the owner.

The procedure in the case at bar is a proceeding *quasi in rem*. The statute was passed long after the claimants had acquired the property in question. Even if they are presumed to know of this statutory provision, of which they, of course, know nothing, they have no means of knowl-

edge of the institution of the proceeding or of the time fixed for the hearing.

At page 14 appellee's counsel cite *Brooklyn Borough Gas Co.* v. *Bennett*, 277 N. Y. S. 203, 154 Misc. 106 (Sup. Ct. 1935). In the case cited, the Court considered a statute which required the Gas Company, a public service corporation, to pay over to the state consumer deposits which had been unclaimed for fifteen years. The depositors, however, had the right at any time to come in and prove ownership of the deposits and recover the amount of their deposits. The act did not divest their title but only provided for a custodial taking. With reference to notice the Court said at page 217:

> "It would appear that the doctrine that seizure is notice solely to the owner and publication to others is contrary to the accepted notions on this subject. Seizure for some purposes is notice to the whole world, including the owner, in those proceedings where, by experience, this form of notice has been found to be reasonable and necessary. (Citing cases.) As a general rule, seizure standing alone is not due process. This is indicated by the traditional practices in proceedings *in rem*."

At page 219 the court said:

> "Though notice by publication as well as seizure is necessary *in rem* to make a sentence in such proceeding binding on the whole world, such sentence is one which usually affects ownership by transferring or extinguishing rights or interest in or to the thing subject to the jurisdiction. Where, however, title or ownership is unaffected and custody only is involved, a different situation is presented."

Counsel quote from the opinion of this Court in *Hollingsworth* v. *Barbour* (1830) (29 U. S.), 4 Pet. 466, 475. The

quotation referred to proceedings in Admiralty and to some similar cases and is *obiter dictum* having no relation to anything decided by the Court.

In *Windsor* v. *McVeigh* (Sup. Ct., 1876), 93 U. S. 274, lands belonging to the plaintiff had been seized by the United States Government upon the ground that he had given aid and comfort to the enemy during the Civil War. A notice had been published, but, upon the appearance of the defendant in the condemnation proceeding, he was not permitted to defend because he was a resident within the Confederate lines and a rebel. The court held that the judgment of condemnation was invalid. In the course of the opinion this court said at page 279:

> "To this end some notification of the proceedings, beyond that arising from the seizure, prescribing the time within which the appearance must be made, is essential. Such notification is usually given by monition, public proclamation, or publication in some other form. The manner of the notification is immaterial, but the notification itself is indispensable."

This case was cited with approval in *Hassell* v. *Wilcox* (Sup. Ct., 1889), 130 U. S. 493, at page 504.

In *Griffin* vs. *Griffin*, 327 U. S. 220, 228 this Court with reference to the notice required by due process said:

> "Such notice cannot be dispensed with even in the case of judgments *in rem* with respect to property within the jurisdiction of the court rendering the judgment. *Roller* v. *Holly*, 176 U. S. 398, 409."

At page 26 Appellee quotes from the decision of the United States Court of Appeals for the District of Columbia in *Philadelphia Company* v. *Securities and Exchange Commission* that "The words 'after notice and * * * hearing'

are words of art in our system of law." The sentence following the quotation is "They connote a hearing appropriate to adjudicatory action, not to legislation or rule making."

Counsel also refers to certain acts of Congress prescribing notice.

We respectfully submit that a legislative requirement for "notice" may well be construed as requiring adequate notice. This, however, is not the situation presented by the statute in this case because the statute provides what the notice shall contain and a notice containing only such provision would comply with the statutory requirements and would be obviously inadequate. Even as construed by the New Jersey Supreme Court the statutory provision for notice is inadequate because the Court did not hold that the statute requires that the basis of the state's claim of escheat should be stated in the notice, and there is nothing in the statute which so provides.

The Publication of the Notice Was Inadequate.

We have dealt with this subject at pages 28, 29 and 30 of our main brief in which the cases cited in appellee's brief are analyzed and considered and other decisions which support our contention are cited. Our contention is that when the state seeks to confiscate property, a real effort must be made to advise the owner of the property of the proceeding. The statutory provisions for escheat, as construed by the State Supreme Court, are not self-executing, and the state acquires no interest in the property until a judgment of escheat has been rendered. 5 N. J. bottom of p. 306 (R. 259). Certainly, the owners of the property are entitled to a real opportunity to present their claims to the

property. Provision for publication designed to comply with the forms of law and to ignore its substance does not constitute due process.

The Statute and the Procedure Thereunder Violate the Constitutional Provision Against Impairment of Contracts.

Appellee's counsel state that the rights of the holders of shares of stock of the appellant and the right to dividends on appellant's stock are not contract rights.

Appellee's counsel cite *Neilson* v. *Russell* (Sup. Ct., 1908), 76 N. J. L. 27, reversed 76 N. J. L. 655. The case cited affords no support to the contention of appellee that the rights of stockholders to their stock and to their dividends are not contract rights. The decision cited in appellee's brief which was in the lower court sustained a transfer tax on stock of a New Jersey corporation which was a part of the estate of a decedent who died domiciled in England. The reversal was based on a construction of the statute, which was held not to provide for such tax. *Breslin* v. *Fries-Breslin Co.* (E. & A., 1904), 70 N. J. L. 274, has no application to the point on which it is cited in appellee's brief.

It is well in settled in New Jersey that the certificate of incorporation and the law in effect at the time the corporation was organized is a contract between the stockholders and the corporation and between the stockholders *inter sese*. See *Allen* vs. *The Francisco Sugar Co.*, 92 N. J. Eq. 431 (E. & A., 1920), and cases therein cited.

Appellee's brief cites *Home Building & Loan Assoc.* v. *Blaisdell*, 290 U. S. 398 and *McSweeney* vs. *Equitable Trust Co.*, 16 N. J. Misc. 193, 198 A. 529 (Sup. Ct., 1938). (The case last above cited was affirmed, solely on the ground of estoppel without considering the constitutionality of the

act involved. 127 N. J. L. 299.) Appellee contends that the Act of 1946 and its effect upon the contracts of the owners of the property may be sustained as an exercise of the police power.

We respectfully submit that the Escheat Act is not an exercise of the police power but is an Act passed solely for the purpose of increasing the revenues of the State.

Under the British law, escheat, *bona vacantia* and forfeiture of a felon's estate were all regarded as revenue measures. In Chitty *Prerogatives of the Crown*, page 226, the following appears:

> "We may mention *escheats* as constituting another, and by no means an unimportant part, of the ordinary and inherent revenue of the Crown."

The State Supreme Court in the case under review stated that

> "Under the common law of England escheats came to be classified as 'another branch of the King's ordinary revenue'." (R. 251) in 5 N. J. 281, 297.

The appellee contends that the escheat law of 1946 is a valid exercise of police power, and that the contracts of the owners of property escheated are lawfully subject to such exercise. The contention amounts to this: that the State in order to enhance its revenues may take the property of these claimants without compensation and without affording them any real opportunity to assert their rights.

In *Home Building & Loan Ass'n* v. *Blaisdell*, 290 U. S. 398, this Court sustained a statute of the State of Minnesota enacted during the world wide depression of the early thirties which extended for a definite period and subject to certain conditions the period within which a mortgagor

might redeem the mortgaged property from a foreclosure sale. With reference to the police power this Court said at page 437, quoting from the opinion in *Manigault* v. *Springs*, 199 U. S. 473.

> "This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals."

The Act in question was sustained because of the serious emergency which was the occasion of its enactment. The opinion reviews many cases in this Court which construed and applied the obligation of contract clause of the Federal Constitution.

At page 429 this court said:

> "This Court has said that 'the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This principle embraces alike those which affect its validity, construction, discharge and enforcement. . . . Nothing can be more material to the obligation than the means of enforcement. . . . The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion.' "

Page 32 of appellee's brief also contains another quotation from the opinion in *Home Building & Loan Assoc.* v. *Blaisdell*, in which this Court said that the question is not whether the legislative action affects contracts incidentally or directly or indirectly, but whether the legisla-

tion is addressed to a legitimate end and whether the measures taken are reasonable and appropriate to that end.

The words "legitimate end", in this quotation, of course, mean an end within the scope of the police power as elsewhere defined in the opinion. The taking of private property to enhance the revenue of the state is not within the police power.

Counsel cite and quote from *People, ex rel. Durham Realty Corp.* v. *LaFetra* 230 N. Y. 429 and *East New York Savings Bank* v. *Hahn*, 326 U. S. 230, both of which cases considered exercises of the police power similar in nature to the power sustained in *Home Building & Loan Assoc.* v. *Blaisdell.*

We do not question the doctrine of the cases cited but deny their application to the case at bar.

The 1946 statute was not enacted to protect the lives, health, morals, comfort or general welfare of the people but solely for the purpose of securing some additional revenue for the state.

Private property may never be taken for the use of the state without compensation by the exercise of the police power. See *Sweet* vs. *Rechel*, 159 U. S. 380, *Connecticut River Railroad Company* v. *County Commissioners of Franklin*, 127 Mass. 50 (Sup. Jud. Ct. 1879); *Inhabitants of Watertown* vs. *Mayo* (Sup. Jud. Ct. 1872) 109 Mass. 315, 318; *Manigault* vs. *Springs*, 199 U. S. 473.

In *Sweet* vs. *Rechel, supra*, this court said at page 399:

> "When, however, the legislature provides for the actual taking and appropriation of private property for public uses, its authority to enact such a regulation rests upon its right of eminent domain—a right vital to the existence and safety of government. But it is a condition precedent to the exercise of such power that the statute make provision for reasonable compensation to the owner."

The opinion distinguishes between the exercise of the police power without any purpose to take and apply property to public uses and the statute there involved under which title was taken to property for the purpose of abating a nuisance.

Neither *The Philadelphia Electric Co. Case*, 352 Pa. 457, 43 A. 2d 116 (1945), cited at page 32 of appellee's brief nor *Attorney General* v. *Provident Inst. for Savings*, 201 Mass. 23, 86 N. E. 912 (1909), cited at page 33 thereof is an escheat case. *In re Philadelphia Electric Company*, proceedings were commenced to require the company to pay into the State Treasury, without escheat, certain monies held by the Company which had remained unpaid and unclaimed for six successive years. Under section 9 of an Act of the Legislature of Pennsylvania enacted in 1937 (which section is set forth in full as a footnote in 43 A. (2d) page 115), the money when paid into the Treasury was to be held subject to being refunded to the owners upon application therefor. The Court said at page 119 in 43 A. (2d):

> "Of course, before moneys or property may be actually escheated under the provisions of the Act of 1915 or the amendment thereof, the want of a claim to the moneys or property or the non-payment thereof for the period of time prescribed by the applicable statute would necessarily have to be established."

As quoted in appellee's brief the Pennsylvania Court said:

> "A legislative provision for escheat is a valid exercise of the police power of the State."

The only authority cited in support of this statement is *Cunius* vs. *Reading School District*, 198 U. S. 458. The decision in the *Cunius* case had nothing whatever to do with

escheat or with the payment of unclaimed money to the State.

In *Malone* vs. *Provident Institution for Savings* (Mass. Sup. Jud. Ct., 1909), 201 Mass. 23, 86 N. E. 912 cited at page 33 of appellee's brief the statute under consideration was not an escheat statute. It required the payment of bank deposits which had been entirely unclaimed for thirty years to the State Treasurer

> "subject to be repaid to the person having and establishing a lawful right thereto, with interest at the rate of three per cent. per annum from the time when it was so paid to said treasurer to the time when it is paid over by him to such person."

The above is also true of the New York statute construed in *Connecticut Mutual Life Ins. Co.* v. *Moore*, 333 U. S. 541, cited at page 35 of appellee's brief as is stated at pages 33 and 34 of our main brief.

If it be assumed that the conservation of unclaimed property for the benefit of the true owner is a lawful exercise of the police power, it by no means follows that the confiscation of such property for the benefit of the state is such an exercise, or that it can lawfully be held that the contracts of the owners of the escheated property made many years before any statute providing for the escheat of such property had been enacted in New Jersey are held by them subject to confiscation by the State in proceedings which afford them no real opportunity to appear and establish their claims.

Since, as we contend, the statute under consideration deprives the owner of the escheated property of all remedy against the appellant and substitutes only a theoretical opportunity to appear in the escheat proceeding, the statute impairs the obligation of their contracts and, therefore,

they are not deprived by the judgment of escheat of their remedy against the appellant. In these circumstances the section of the Act which assumes to protect the appellant from liability to the owners of the escheated property is invalid as violating the contract clause of the Federal Constitution and affords no protection to the appellant.

Counsel, at page 38, cite and quote from *Canada Southern Railroad* vs. *Gebhard*, 109 U. S. 527. The case cited involved the validity of a plan with relation to the refunding of bonds of the Canadian Southern Railway Company, a Canadian corporation, all of the property of which was located in Canada. A holder of some of the bonds objected that the refunding impaired his contract rights. This Court in sustaining the legislation which authorized the refunding said at page 535:

> "Hence it seems to be eminently proper that where the legislative power exists some statutory provision should be made for binding the minority in a reasonable way by the will of the majority; and unless, as is the case in the States of the United States, the passage of laws impairing the obligation of contracts is forbidden, we see no good reason why such provision may not be made in respect to existing as well as prospective obligations."

At page 38 counsel again cite and quote from the opinion in *Anderson National Bank* vs. *Luckett*. As above stated, this case did not deal with any escheat. All that this Court considered in the case was the statute which required the bank to pay the unclaimed deposits to a state officer to be held subject to the claims of the owners thereof. This is also true of the *Reading Company* case, 352 Pa. 457, 43 A. (2d) 116, cited at page 39, as the statute under consideration in that case merely required the payment of the money

to the State Treasurer to be held subject to the claims of the owners.

Appellee contends that the judgment of the State Court in the case at bar protects the appellant from the claims of the claimants under Article IV, Section 1 of the Federal Constitution. The judgment depends upon the statute. If the statute and the procedure thereunder violate either the due process clause of the Fourteenth Amendment or the constitutional provision against the impairment of contracts, the judgment is not entitled to full faith and credit either in the State of New Jersey or elsewhere and affords no protection to the appellant.

In *Griffin* vs. *Griffin*, 327 U. S. 220, 228, this Court said:

> "A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction. *National Exchange Bank* v. *Wiley*, 195 U. S. 257; *Old Wayne Life Assn.* v. *McDonough*, 204 U. S. 8, 23; *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394, 401. Moreover, due process requires that no other jurisdiction shall give effect, even as a matter of comity, to a judgment elsewhere acquired without due process."

The Shares of Capital Stock of the Appellant and the Dividends on Such Shares of Stock Owned by Nonresidents Are Not Subject to Escheat to the State of New Jersey.

Appellees at page 39 of their brief state that the New Jersey Court determined that the situs of the shares of stock and dividends was in New Jersey for the purpose of escheat and that there is, therefore, nothing for this Court to review on this question. The question whether the State has the power to escheat these shares of stock and dividends is not a question of fact but a question of law. The facts

in the case were stipulated. The only question is whether the stipulated facts establish the right of the State of New Jersey to escheat the property in question.

Appellees cite in support of their contention *Portland R. L. & P. Co.* v. *Railroad Commission*, 229 U. S. 397 and *Grayson* v. *Harris*, 267 U. S. 352. Both of these cases involved disputed questions of fact which were determined by the trial court and the determination by the trial court was adopted by the state appellate court They are not in point. They do not even tend to sustain appellee's position.

Neilson v. *Russell*, 76 N. J. L. 27, reversed 76 N. J. L. 655; *Greves* v. *Shaw*, 173 Mass. 205, 53 N. E. 372; *Tax Commission* v. *Aldrich*, 316 U. S. 174 cited at page 41 of Appellee's brief were transfer tax cases.

They hold that the state of incorporation of a corporation has the power to impose a transfer inheritance tax upon the transfer of the stock of a corporation owned by a decedent who died domiciled in another jurisdiction.

We have commented upon the Aldrich case at page 45 of our main brief.

We respectfully submit that the power to impose a transfer tax on the transfer of shares from the dead to the living differs widely from the power to confiscate shares of stock owned by a living non-resident on the ground that the non-resident had failed to assert his claim or to keep the corporation issuing the stock advised of his address.

Southern Railroad Co. v. *Allison*, 190 U. S. 326, cited at page 42 of appellee's brief, dealt merely with the jurisdiction of a Federal Court when based upon diversity of citizenship.

Newark Fire Insurance Co. v. *State Board*, 307 U. S. 313, dealt with the power of the state of incorporation to tax the intangible property of the corporation. There is

nothing in the opinion which supports the view that the state of incorporation may confiscate claims which non-residents have against the corporation or shares of stock therein owned by non-residents.

At page 44 counsel cite *Pennington* v. *Fourth National Bank*, 243 U. S. 269. In the case cited Mrs. Pennington, who had been divorced from her husband, sought alimony. She joined as a defendant the Fourth National Bank of Cincinnati in which her former husband had a deposit account. The Court entered a preliminary order enjoining the Bank from paying out any part of the deposit and later directed the Bank to make payments from it to the wife. Finally, the Court perpetually enjoined the Bank from making any payment to the husband and ordered the Bank to pay the balance to the wife which it did. The husband had been served by publication only and challenged the judgment of the Court. This Court on appeal sustained the judgment of the Ohio Court, citing among other cases: *Harris* v. *Balk*, 198 U. S. 215. The Court said, in part, at page 271:

> "The thing belonging to the absent defendant is seized and applied to the satisfaction of his obligation."

In *Harris* v. *Balk*, 198 U. S. 215, Harris, a resident of North Carolina, was indebted to Balk in the sum of $180. Balk was also a resident of North Carolina. Thereafter, while Harris was temporarily in Baltimore, one Epstein, a creditor of Balk, caused to be issued a non-resident writ of attachment against Balk, attaching the debt due Balk from Harris, which writ was personally served on Harris. Judgment was thereafter entered and Harris paid the money to Epstein.

Before the judgment was entered and the money paid, but after the garnishment proceedings were instituted, Balk sued Harris who pleaded the Maryland judgment in his defense. The trial court rejected this defense on the ground that the Maryland Court had no jurisdiction to attach or garnish the debt due from Harris to Balk, because Harris was but temporarily in the State and the situs of the debt was in North Carolina. This court reversed and said in part at page 222:

> "We do not see how the question of jurisdiction *vel non* can properly be made to depend upon the so-called original *situs* of the debt, or upon the character of the stay of the garnishee, whether temporary or permanent, in the State where the attachment is issued. Power over the person of the garnishee confers jurisdiction on the courts of the State where the writ issues. *Blackstone* v. *Miller*, 188 U. S. 189, 206. If, while temporarily there, his creditor might sue him there and recover the debt, then he is liable to process of garnishment, no matter where the *situs* of the debt was originally."

At page 226 this court said:

> "The plaintiff, in such proceeding in the foreign State is able to sue out the attachment and attach the debt due from the garnishee to his (the garnishee's) creditor, because of the fact that the plaintiff is really in such proceeding a representative of the creditor of the garnishee, and therefore if such creditor himself had the right to commence suit to recover the debt in the foreign State his representative has the same right, as representing him, and may garnish or attach the debt, provided the municipal law of the State where the attachment was sued out permits it."

We respectfully submit that *Harris* vs. *Balk* well illustrates the wide difference between attachment and escheat. Attachment involves no confiscation. The debt is seized and applied to the use of the owner of the debt in satisfaction or partial satisfaction of his debt to the attaching creditor. The attaching creditor acts in his attachment suit as the representative of the owner of the debt, and, therefore, can attach the debt because the creditor who is his debtor could sue in the jurisdiction to recover it.

Corry v. *Baltimore,* 196 U. S. 466 and *Schuylkill Trust Co.* v. *Pennsylvania,* 302 U. S. 506, are both tax cases.

We have commented upon *Security Savings Bank* vs. *California,* 263 U. S. 282, cited at page 45 of appellee's brief at page 44 of our main brief. The reasoning which led this court to sustain the escheat proceeding in that case was based upon facts not present in the case at bar. Attention may be called to the fact that in the *Security Savings Bank* case this court said at page 287:

> "The state court likened the proceeding to garnishment, and thought that it should be described as *quasi in rem.* In form it resembled garnishment. In substance it is like proceeding in escheat."

This court in determining the power of the State of New Jersey to escheat the claims in question will undoubtedly consider the substance rather than the form.

The *Philadelphia Electric Company* case, 352 Pa. 457, cited at page 45 of appellee's brief, differs from the case at bar in two respects:

> First, the Philadelphia Electric Company was unquestionably a local Company doing business nowhere except in Pennsylvania and having no property elsewhere. At least, it does not appear in the case that it did any business or had any property except in

Pennsylvania; Second, as has above been stated, the statutory provision there under consideration provided not for escheat but for payments to the State Treasurer to be held subject to the claims of the owners.

Appellee asserts that since the appellant is a New Jersey corporation the State has control over the property covered by the judgment and therefore can escheat it.

The question involved is whether the State is empowered to assert control over the claims of the nonresidents. The State Supreme Court said "The State's right is purely derivative; it takes only the interest of the unknown or absentee owner." 5 N. J. 281, 298 R., p. 252. These claims are based on contracts made outside of the State and to be performed outside of the State. The property of the corporation is located outside of the State. These claims are enforceable not only in New Jersey but elsewhere where suit may be instituted against the corporation.

In *Connecticut Mutual Life Insurance Company* vs. *Moore*, 333 U. S. 541, this Court held that the State of New York had sufficient contacts with the claims of residents of New York against insurance companies incorporated under the laws of other states to support the statute there under consideration, notwithstanding the fact that, at least in the case of one of such insurance companies, the laws of Pennsylvania provided for an escheat of the same claims simply because the corporation was a Pennsylvania corporation. The State of New Jersey has no contacts with the claims of the nonresidents involved in the case at bar. The contacts are where the contracts were made, where they are to be performed and where the claimants reside.

As shown at page 55 in our main brief the State has not such control over the claims of nonresidents that it is empowered to discharge them under a state bankruptcy law, unless they submit their claims in the proceeding.

Control over the subject matter of a debt or of the debtor does not in every instance confer control over the claim of the creditor with respect to such debt. The State Court in which interpleader proceedings are instituted has no control over the claims of nonresidents although the subject matter of the suit has been deposited in Court. See: *New York Life Ins. Co.* v. *Dunlevy*, 241 U. S. 518.

We respectfully submit that in view of the undisputed facts in this case the State had no power to escheat the claims of these nonresidents and the judgment of escheat does not protect the appellant.

Conclusion.

We respectfully submit that the Act of 1946 is invalid because the procedure therein does not comply with the requirements of due process of law, because the Act and the procedure thereunder impairs the obligation of the contracts of the persons whose claims are escheated, and because the situs of the claims in question is not within the State of New Jersey for the purpose of escheat; that the judgment rendered by the State Court does not protect the appellant from the subsequent assertion of the claims against it by the owners of the property escheated and that to compel the appellant to transfer the shares of stock in question and to pay to the State the amount of the dividends in question leaving it still liable to satisfy the claims of the owners of the property notwithstanding the judgment, deprives the appellant of its property without due process of law.

Respectfully submitted,

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